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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 16th May 2018
Decided on: 24th August 2018

\+ **CRL.A. 129/2012**

KULWINDER ..... Appellant

Through: Ms. Sumita Kapil and Ms. Pooja Swami, Advocates.

versus

STATE (NCT OF DELHI) ..... Respondent

Through: Ms. Richa Kapoor, SPP with Mr. Ashish Negi, Ms. Sushila and Ms. Shikha Mehra, Advocates.

\+ **CRL.A. 139/2012**

KAMALA & ORS. ..... Appellants

Through: Mr. Anubha Rastogi and Mr. Shreeji Bhavsar, Advocate.

versus

STATE OF NCT OF DELHI & ORS ..... Respondents

Through: Ms. Richa Kapoor, SPP with Mr. Ashish Negi, Ms. Sushila and Ms. Shikha Mehra, Advocates.
Ms. Sumita Kapil, Mr. M.L. Yadav, Mr. Mukesh Kalia, Mr. M.N. Dudeja, Mr. Ajay Verma, Mr. Jitender Sharma, Mr. S. Rajan, Mr. Anupam Sharma, Mr. R.P. Luthra and Mr. Hanumant Sakhuja, Advocates.
Mr. Jitendra Sethi and Mr. Hemant Gulati, Advocates for Accused Nos. 25, 39, 67, 68, 75.

\+ **CRL.A. 190/2012**

KARAMPAL ..... Appellant

Through: Mr. Mukesh Kalia and Mr. Jitender Sethi, Advocates.

versus

THE STATE OF HARYANA ..... Respondent

Through: Ms. Richa Kapoor, SPP with Mr. Ashish Negi, Ms. Sushila and Ms. Shikha Mehra, Advocates.

\+ **CRL.A. 210/2012**

DHARAMBIR @ ILLA & ORS. ..... Appellants

Through: Mr. Ajay Verma, Mr. Mukesh Kalia, Mr. M.N. Dudeja and Mr. Anuj Chauhan, Advocates

versus

THE STATE (NCT OF DELHI) ..... Respondent

Through: Ms. Richa Kapoor, SPP with Mr. Ashish Negi, Ms. Sushila and Ms. Shikha Mehra, Advocates.

\+ **CRL.A. 226/2012**

RAMPHAL & ANR. .....Appellants

Through: Mr. N. Hariharan, Sr. Advocate with Mr. Varun Deswal, Mr. Siddharth S. Yadav, Mr. Aditya Vaibhav Singh, Mr. Prateek Bhalla and Ms. Mallika Chadha, Advocates.

versus

THE STATE (NCT OF DELHI) ..... Respondent

Through: Ms. Richa Kapoor, SPP with Mr. Ashish Negi, Ms. Sushila and Ms. Shikha Mehra, Advocates.

\+ **CRL.A. 1299/2012**

STATE (NCT OF DELHI) & ANR. ..... Appellants

Through: Ms. Richa Kapoor, SPP with Mr. Ashish Negi, Ms. Sushila and Ms. Shikha Mehra, Advocates.

versus

KULWINDER & ORS. ..... Respondents

Through: Ms. Sumita Kapil, Mr. M.L. Yadav, Mr. Mukesh Kalia, Mr. M.N. Dudeja, Mr. Ajay Verma, Mr. Jitender Sethi, Mr. S. Rajan, Mr. Anupam Sharma, Mr. R.P. Luthra and Mr. Hanumant Sakhuja, Advocates.
Mr. Jitendra Sethi and Mr. Hemant Gulati, Advocates for Accused Nos. 25, 39, 67, 68, 75.

\+ **CRL.A. 1472/2013**

STATE & ANR. ..... Appellants

Through: Ms. Richa Kapoor, SPP with Mr. Ashish Negi, Ms. Sushila and Ms. Shikha Mehra, Advocates.

versus

JASBIR @ LILLU ..... Respondent

Through: Mr. R.P. Luthra, *Amicus Curiae* with Mr. Sourabh Luthra, Advocates

CORAM: JUSTICE S. MURALIDHAR
JUSTICE I.S. MEHTA

JUDGMENT

Dr. S. Muralidhar, J.:

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Introduction

1. Mirchpur, a village in Hissar District in Haryana, witnessed in the forenoon of 21st April 2010, a riot in which 18 houses of Balmikis (a Dalit community) were burnt by an irate mob of Jats, the dominant community in that village. One 60 year old male and his differently abled daughter burnt to death in the conflagaration. Many Balmikis suffered injuries and their properties were destroyed. Over 200 Balmiki families fled Mirchpur in the aftermath and sought shelter in a farm house of one Ved Pal Tanwar. More than eight years later, many of those who fled are yet to return to Mirchpur. The trigger for this crime was a seemingly trivial incident that took place on the evening of 19th June 2010 when a dog which belonged to a Balmiki resident barked at a group of Jat youth returning to their dwelling places through the main thoroughfare of the village.

2. Of the 103 accused persons sent up for trial, five were juveniles and were tried

before the Juvenile Justice Board ('JJB') in Hissar. Of the remaining 98, the trial ended in the acquittal of 82 of them and the conviction of 16 of them. These seven connected appeals arise out of the impugned judgments of the trial Court.

The present appeals

3. Two of the seven appeals have been preferred by the State, one of them by the original complainants, and four have been preferred by the convicted accused persons. Six of the seven appeals seek to assail the judgment dated 24th September 2011 passed by the learned Additional Sessions Judge ('ASJ') - II, North-west District, Rohini Courts (hereinafter referred to as 'trial Court') in SC No.1238/2010 arising out of FIR No.166/2010 registered at PS Narnaund, Haryana. By the said judgment, 15 of the 97 accused persons who had been charged with offences punishable under the Indian Penal Code ('IPC') and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 ('POA Act') were convicted and sentenced in terms of the consequential order on sentence dated 31st October 2011.

4. The seventh appeal, i.e. Crl.A.1472/2013, is an appeal by the State against the judgment dated 6th October 2012 in SC No.1238A/2012 arising out of FIR No.166/2010 whereby the accused Jasbir @ Lillu son of Raja (A-58) was acquitted of all the offences with which he had been charged except for that punishable under Section 174A IPC to which he pleaded guilty and was sentenced in terms of the consequential order on sentence dated 12th October 2012.

5. The State's appeal, i.e. Crl.A.1299/2012, against the judgment dated 24th September 2011 has a total of 90 Respondents. The convicted accused persons have been impleaded as Respondent Nos.1-15 while the acquitted accused persons

have been impleaded as Respondent Nos.16-90.

6. The original complainants, i.e. Kamala Devi wife of Tara Chand, Pradeep son of Tara Chand, Gulab son of Jai Lal, Sube Singh son of Bhura Ram, and Satyawan son of Roshanlal, have preferred Crl.A.139/2012. Therein, the State has been impleaded as Respondent No.1; the convicted accused persons have been impleaded as Respondent Nos.2-16; and the accused persons acquitted by the judgment dated 24th September 2011 have been impleaded as Respondent Nos.17-90. Four of the accused persons died during the pendency of these appeals, viz. Baljit son of Inder (Accused No. 42: 'A-42'), Bobal @ Langra son of Tek Ram (A-94), Rishi son of Satbir (A-23), and Jagdish @ Hathi son of Baru Ram (A-17).

Transfer of the trial to Delhi

7. As already noted, the charge-sheet in the present case was originally filed against 103 accused of which five were juveniles. Therefore, the trials against them were separated and conducted before the JJB at Hissar. Initially, the criminal case against the remaining 98 accused was before the ASJ at Hissar. In fact, the learned ASJ at Hissar had also framed charges against the 98 accused persons by an order dated 6th September 2010. However, pursuant to the order dated 8th December 2010 passed by the Supreme Court of India in W.P.(C) 211/2010, SC No.3-SC/ST pending before the Court of the ASJ at Hissar was transferred to the Court of the ASJ at Delhi which was notified as a Special Court under the POA Act and the trial was directed to commence *de novo*.

Charges

8. The learned ASJ at Delhi passed an order on charge on 10th March 2011 whereby it was held that there was sufficient material to frame charges against

various accused persons. Subsequent thereto, 12 separate charges were framed *qua* 97 accused persons under Sections 120B/302/147/148/149/323/325/395/397/427/ 435/436/449/450/452 IPC as well as under Sections 3(1)(x) and (xv) and 3(2)(iii), (iv), and (v) POA Act. One of them, i.e. Vedpal son of Dayanand (A-98), was also charged under Section 216 IPC due to the allegation against him that he had harboured/concealed Sanjay @ Handa son of Dayanand (A-77) with the intention of preventing him from being apprehended. Vinod son of Ram Niwas (A-37), who was the Station House Officer ('SHO') of PS Narnaund at the time of the incident, was also charged under the aforementioned provisions of the IPC as well as under Section 4 POA Act for wilfully neglecting his duties as a public servant and who was not a member of a Scheduled Caste ('SC') or Scheduled Tribe ('ST') during the incident at village Mirchpur. All the accused pleaded not guilty to the charges and claimed trial.

9. Jasbir @ Lillu son of Raja (A-58: Respondent in Crl.A.1472/2013) was declared a proclaimed offender ('PO') by the trial Court on 27th September 2011 when he absconded at the stage of recording of the statements of the accused persons under Section 313 Cr PC. Therefore, his case was separated out. Trial proceeded from then on against the remaining 97 accused persons.

Convictions and sentences awarded by the trial Court

10. As far as the remaining 97 accused were concerned, by the judgment dated 24th September 2011, the trial Court convicted 15 of them while acquitting the remaining 82 of all charges.

11. A-20, A-34 and A-38 were convicted for the offences punishable under Sections 147/323/427/436/304(II)/149 IPC and Section 3(2)(iv) POA Act. The trial

court noted that Section 3(2)(v) POA Act would apply by default due to the convictions under Sections 436 and 304(II) IPC, both of which are punishable by imprisonment for a term of 10 years of more. Therefore, by the subsequent order on sentence dated 31st October 2011, the trial Court sentenced A-20, A-34 and A-38 as under:

(i) To rigorous imprisonment ('RI') for life and fine of Rs.20,000/- each (which would be paid to the victims as compensation if recovered) for the offences punishable under Section 3(2)(iv) & (v) POA Act and in default of payment of fine, to undergo further simple imprisonment ('SI') for a month.

(ii) To RI for two years for each of the offences punishable under Sections 147, 323/149, and 427/149 IPC.

(iii) All sentences were directed to run concurrently.

12. Five of the accused persons, viz. A-42, A-3, A-25, A-13 and A-94, were convicted for the offences punishable under Sections 147, 323/149, 427/149 and 435/149 IPC and Section 3(2)(iii) POA Act. The trial Court observed that the conviction under Section 3(2)(iii) POA Act would prevail over the conviction under Section 435 IPC, the former being a punishment provided for under a special legislation. Thus, these five convicted accused persons were sentenced in terms of the consequent order on sentence dated 31st October 2011 as under:

(i) To RI for five years and fine of Rs.20,000/- each (which would be paid to the victims as compensation if recovered) for the offence punishable under Section 3(2)(iii) POA Act (which would prevail over the conviction under Section 435/149 IPC) and in default of payment of fine, to undergo further SI for a month.

(ii) To RI for two years for each of the offences punishable under Sections 147,

323/149, and 427/149 IPC.

(iii) All sentences were directed to run concurrently.

13. Seven of the convicted accused persons, viz. A-27, A-64, A-90, A-65, A-41, A-23, and A-39, were convicted for the offences punishable under Sections 147, 323/149, and 427/149 IPC and it was directed that they be released on probation of good conduct under Section 4 of the Probation of Offenders Act 1958 for a period of one year with supervision one their furnishing a personal bond in the sum of Rs.10,000/- each with one surety of the like amount and to appear and receive sentence when called upon during such period and in the meantime to keep t the peace and be of good behaviour. It was further directed that in case of any default or repetition of offence, the convicts shall undergo SI for a period of one year.

14. As far as A-58 (Respondent in Crl.A.1472/2013) was concerned, he subsequently surrendered on 28th August 2012 and a separate judgment dated 6th October 2012 was passed against him by the trial Court, acquitting him of all charges except that under Section 174A IPC to which he had pleaded guilty. By the order on sentence dated 11th October 2012, he was sentenced to RI for six months along with fine of Rs.2,000/- and in default of payment of fine, to undergo further SI for a period of 15 days.

Before this Court

15. Notices were issued to the following 57 Respondents in terms of the orders dated 24th February 2012 (in Crl.A.139/2012 preferred by the complainants) and 6th September 2012 (in Crl.A.1299/2012 preferred by the State):

S.No.	Respondent	Accused No.
1.	Kulwinder son of Ram Mehar	38

2.	Ramphal son of Prithvi	20
3.	Rajender son of Pale	34
4.	Baljeet son of Inder	42
5.	Karambir son of Tara Chand	3
6.	Karampal son of Satbir	25
7.	Dharambir @ Illa son of Maichand	13
8.	Bobal @ Langra son of Tek Chand	94
9.	Sumit son of Satyawan	27
10.	Pradeep son of Jaibir	64
11.	Rajpal son of Sheo Chand	90
12.	Pradeep son of Suresh	65
13.	Sunil son of Dayanand	41
14.	Rishi son of Satbir	23
15.	Monu son of Suresh	39
16.	Jagdish @ Hathi son of Baru Ram	17
17.	Pawan son of Hoshiar Singh	68
18.	Praveen son of Jagdev	67
19.	Sandeep @ Langra son of Chander	75
20.	Sanjay @ Sandeep son of Amar Lal	76
21.	Jitender son of Satbir	53
22.	Jokhar @ Joginder son of Inder Singh	89
23.	Kuldeep @ Midda son of Balbir	15
24.	Sonu @ Monu son of Ramesh	83
25.	Naseeb son of Prem Singh	60
26.	Rajesh son of Dupa	43
27.	Ajit son of Dalip	32
28.	Jagdish @ Jangla son of Lahna Ram @ Lakshman	95
29.	Manbir son of Jile Singh	59
30.	Balwan Singh son of Jeela	47
31.	Rajinder son of Dhup Singh	33
32.	Pawan son of Rajbir	69
33.	Dalbir son of Tara Chand	50
34.	Kuldeep son of Om Prakash	57
35.	Dharambir son of Tara Chand	1
36.	Roshan Lal son of Ram Swaroop	29
37.	Sattu Singh son of Randhir Master	79
38.	Jogal @ Doger son of Hawa Singh	52

39.	Pradeep son of Satbir	66
40.	Pradeep son of Jagbir	63
41.	Dalbir son of Dalip Singh	5
42.	Suresh Kumar son of Balbir	18
43.	Vikash son of Sunehra @ Sumer Singh	87
44.	Pradeep son of Ramphal	28
45.	Vedpal son of Dayanand	98
46.	Satyawan son of Rajender	80
47.	Amit son of Satyawan	40
48.	Pawan son of Ram Mehar	2
49.	Deepak @ Sonu son of Krishan @ Pappu	14
50.	Balwan son of Inder Singh	6
51.	Pradeep Singh son of Balwan	22
52.	Sanjay son of Dayanand	77
53.	Satyawan @ Satta Singh son of Karan Singh	78
54.	Daya Singh son of Jeet Singh	21
55.	Rupesh son of Tek Chand	93
56.	Rajbir @ Nanhe son of Mai Chand	4
57.	Satyawan son of Tara Chand	7

16. As far as Jasbir alias Lillu, A-58 (Respondent in Crl.A.1472/2013) is concerned, this Court granted the State leave to appeal by its order dated 18th November 2013 and further directed issuance of bailable arrest warrants against the Respondent returnable on 11th December 2013.

17. Therefore, in the present appeals, the Court is concerned with the question of the correctness of the judgment of the trial Court dated 24th September 2011 whereby 15 accused persons were convicted in the manner mentioned hereinbefore while the remaining 82 accused persons were acquitted of all charges. The Court is also concerned with the correctness of the judgment of the trial Court dated 6th October 2012 whereby accused A-58 was acquitted of all charges made against him except that under Section 174A IPC to which he had pled guilty.

18. Furthermore, the Court shall also consider the cross-appeals which have been filed by some of the convicted accused persons, i.e. Crl.A.129/2012 by A-38; Crl.190/2012 by A-25; Crl.A.210/2012 by A-3, A-13, and A-94; and Crl.A.226/2012 by A-20 and A-34. In light of the death of four of the aforementioned noticees, viz. A-42, A-94, A-23 and A-17, the appeals against them stand abated and, in the case of A-94, the appeal filed by him (Crl.A.210/2012) also stands abated as far as his conviction is concerned. Thus, in effect, the Court is concerned with the findings of the trial Court *qua* 53 of the aforementioned 57 accused persons as well as A-58.

The demographic composition of Mirchpur

19. The village of Mirchpur is located in District Hissar in the State of Haryana on the border between the Hissar and Jind districts. Several communities such as the Lohars, Chamars, Balmikis, Brahmins, Jats, etc. reside at Mirchpur, the dominant among them being the Jat community. Yogesh Kumar (PW-7), a resident of Mirchpur, deposed at the trial that there were around 200-250 Balmiki households in the village at the time of the incident. He further deposed that the members of the Balmiki community to which he belongs earn their livelihood working as daily wage labourers in the fields of the Jat community. According to him, the numerical strength of the Jat community equalled the collective numerical strength of all the other communities that resided in the village.

20. PW-7 also deposed that the Jat community is the financially dominant community in the village. The houses of the Balmiki community were restricted to one portion of the village, i.e. a *basti*, is surrounded on three sides by houses of those belonging to the Jat community.

Incident of 19th April 2010

21. The trial in the present case was essentially concerning an incident which occurred on 21st April 2010 in which 18 houses belonging to the Balmiki community were burned and two persons belonging to that community died, viz. Tara Chand and his daughter, Suman. In all, 55 persons belonging to the Balmiki community received simple injuries while Dhoop Singh (PW-29) received grievous injuries. The incident involved widespread rioting, arson, looting, stone pelting, and brick-batting which resulted in extensive damage to properties belonging to members of the Balmiki community.

22. As noted earlier, the precursor to the incident of 21st April 2010 was an incident that took place on 19th April 2010. At around 8-8.30 pm on that date, some boys belonging to the Jat community – viz. A-34, A-14, and A-39 along with 10-15 other boys – were passing through the Balmiki *basti* in an inebriated state when a dog belonging to Karan Singh (DW-13) barked at them. The accused persons took offence to this and began throwing rocks at the dog. One of those rocks entered the house of DW-13 who, along with his nephew Yogesh Kumar (PW-7), came out and objected to their behaviour. The accused persons sought to intimidate DW-13 by threatening him with violence if he complained further. An altercation took place between PW-7 and A-34 which was defused by DW-13. Thereafter, the boys from the Jat community left.

23. Ajit, a member of the Jat community, advised DW-13 to apologize to the members of the Jat community so as to avoid any further problems. Heeding his advice, DW-13 went to the house of A-34 along with his neighbour, Veerbhan, so as to settle the matter amicably. However, both of them were beaten up by the boys

of the Jat community who had assembled there.

24. Initially, both DW-13 and Veerbhan were admitted to the District Hospital at Hansi but since Veerbhan had serious injuries, DW-13 took him to the District Hospital at Hissar where he was admitted for a day. DW-13 was called back by the Balmikis stating that there could be a compromise. Therefore, on the following day, i.e. 20th April 2010, he got Veerbhan discharged from the hospital.

20th April 2010

25. On his way back to the village on 20th April 2010, DW-13 went to PS Narnaund and informed the SHO about the incident that had taken place on the previous day, i.e. 19th April 2010. DD No.31 dated 20th April 2010 was recorded in the *roznamcha* of PS Narnaund. An application was made by the police on that date itself, i.e. 20th April 2010, to the Medical Officer of the Government Hospital, Narnaund for a fitness certificate to record the statement of Veerbhan. This fitness certificate was given by Dr. Harish Goel (PW-55). DD No.31 clearly, therefore, showed that the police was aware of the incident of 19th April 2010. However, the SHO, Inspector Vinod Kajal (A-37), did not fully appreciate the gravity of the complaint and merely sent five or six police constables to village Mirchpur to deal with the matter.

26. Some PWs have spoken about the members of the Jat community moving in groups in the village armed with lathis and holding a community *panchayat* on 20th April 2010. These groups of Jats were purportedly threatening the Balmiki community. Vicky (PW-42) has stated how, on the evening of 20th April 2010, there was an atmosphere of fear in the village since a large number of boys from the Jat community had gathered and the members of the Balmiki community

apprehended that they might be attacked. According to PW-42, on 20th April 2010, some persons from the Jat community *panchayat* went to Hissar Hospital and requested DW-13 and Veerbhan not to get an FIR registered. They offered to arrive at a compromise.

27. The holding of the *panchayat* by the Jat members in the village on 20th April 2010 is also spoken to by PWs 42, 45 and 47. It has also come in the evidence of the DWs 16 and 22 that A-34, who was running a dairy, had not supplied milk to the Balmikis.

Incident of 21st April 2010

28. The case of the prosecution is that at around 7 am on 21st April 2010, the Jat *panchayat* of the village came to the house of Veerbhan asking him to compromise the dispute. Veerbhan is stated to have agreed to this suggestion. Meanwhile, at around 8 am, A-34 was passing through the main *gali* on his *baggi* (cart). The prosecution version is that he threatened the Balmiki boys sitting in the *gali* that their houses would be burnt, as a result of which there was a verbal altercation between A-34 and the Balmiki boys. A-34 then ran away from that place. At this stage, a false alarm was raised by the Jats that A-34 had been beaten by the Balmiki boys.

29. Soon therafter, Gulaba (PW-48), the *chowkidar* of the village who belonged to the Balmiki community, was returning to the village when he noticed that the wives of Satbir and Kapoora, who belonged to the Jat community, were both carrying oil cans. He then encountered A-34, A-20, and A-25 along with 10-15 other Jat boys at the house of A-34. PW-48 states that A-34 caught hold of him by the collar while A-25 snatched his *lathi* from him and hit him on the back. When

PW-48 fell down, A-20 purportedly hit him on the head. Persons from the Balmiki community then lifted PW-48 and took him back to his house where he was placed on a cot.

30. When PW-48 disclosed to the members of the Balmiki community what had transpired at the residence of A-34, Satyawan (PW-47) and other Balmiki members telephoned PS Narnaund and informed the SHO (A-37) about what PW-48 had told them and about his witnessing the preparations that were going on in the Jat *basti* for attacking the house of the Balmikis. They requested the SHO to come to the spot at once. However, the SHO only sent four or five police personnel.

31. Thereafter, at around 9 am, a large number of Jats came towards the Balmiki *basti*. There were purportedly 100 to 150 Jats initially, but later this number is said to have grown to 300 to 400. The Jats were armed with *lathis*, *jellies*, *gandasis*, stones, oil cans, and petrol. They had brought the stones in a *rehri* (hand cart). They also had oil cans. The members of the Jat community are said to have started pelting stones at the Balmikis in the *basti*. The Balmikis retaliated by throwing stones, brickbats, and whatever else they could lay their hands on. However, they were far outnumbered by the Jats who were well prepared.

32. At this stage, PW-47 is said to have again called the SHO from his mobile phone and informed him that matters were getting out of hand and requested him to come to the village himself. Inspector Vinod Kajal (A-37), the SHO of PS Narnaund then arrived at village Mirchpur in a police gypsy. According to the prosecution, A-37 asked the males of the Balmiki community to assemble at the *chaupal* in the Balmiki *basti*. Thus, the men of the Balmiki community were

separated from the women, the children, and the elderly. While the Balmiki men and boys moved towards the Balmiki *chaupal*, A-37 is alleged to have instigated the Jat community members to seize the opportunity and set fire to the houses of the Balmikis. The Jats, who had surrounded the Balmiki *basti* from all sides, started attacking them with the *jellies*, *gandasis* and *lathis*. They also commenced burning the houses of the Balmikis and shouted caste-based abuses and slurs such as: "*chure deda ne maro*"; "*chureya nu jala do*"; "*churo ke aag laga do deda ne kad do bahar*"; "*phook do phhok deda ne phook do*"; "*jala do, aag lago do deda ne*"; "*churya ne dedha ne phook do, mar do*"; "*phook do dedhan ne, chooraya ne phoonk do*"; "*jala do deda ne*"; "*maro in dedya ne bhanjod ne kutya ne*"; and "*maro, jala do*".

33. The Balmiki men who had collected at the *chaupal* heard the cries of the Balmiki women. They ran from the *chaupal* and found that their entire *mohalla* had been surrounded by the Jats. The eye witnesses of the Balmiki community could see the mob burning the houses of Sanjay (PW-36), situated at the main road, as they climbed to the roof of some of the other houses. Tara Chand and his daughter Suman (who was physically challenged) were badly burnt. While Suman died in the house, Tara Chand rushed to the house of his neighbour, Diwan Singh, with a view to saving himself. Tara Chand was then taken to the Government Hospital, Hissar in a government gypsy by his son Amar Lal (CW-1) and his nephew Ashok (PW-35). In the incident, 51 persons belonging to the Balmiki community received injuries and 18 of their properties were burnt and there was large-scale rioting and looting of the properties.

34. At the hospital, Sub-inspector ('SI') Bani Singh (PW-64) initially recorded the

statement of Tara Chand in the presence of Dr. Dinesh Kumar (PW-68) after obtaining a certificate from PW-68 declaring him fit to make a statement. Senior police officials, including the Superintendent of Police ('SP') (Hissar) and Deputy Superintended of Police ('DSP') (Hansi), advised PW-64 to have the statement of Tara Chand recorded before a Judicial Magistrate.

35. An application was moved before Mr. Harish Goyal (PW-55), Judicial Magistrate First Class ('JMFC'), Ambala, who went to Government Hospital, Hissar and recorded the second statement of Tara Chand after receiving a certificate declaring him to be fit to make a statement from Dr. Dinesh Kumar (PW-68). After the statement was recorded, the Tara Chand's condition deteriorated rapidly and a decision was made to refer him to PGIMS, Rohtak. However, due to his extremely poor condition, Tara Chand was shifted immediately to Soni Burns Hospital, Hissar where he was declared brought dead.

36. Inquest proceedings were conducted on 22nd April 2010 in respect of both Tara Chand and his daughter, Suman. On the same day, i.e. 22nd April 2010, DSP Abhey Singh (PW-66) arrested 18 accused persons. Two more accused persons, A-12 and A-36, were arrested on 23rd April 2010. On 30th April 2010, DSP Tula Ram (PW-67) took over the investigation from PW-66 and arrested A-13 and A-14.

Charge sheets

37. On 1st May 2010, A-37 was arrested. On 14th May 2010, A-15, A-16, A-17, A-18, A-19, A-20, and A-21 were arrested. A-22 was arrested on 15th May 2010 and on the next day, i.e. 16th May 2010, the arrests of A-23, A-24, and A-25 were effected. A-26 and A-27 were arrested on 17th May 2010. The arrests of the

remaining accused persons continued to take place till 9th September 2010. Five charge-sheets were filed on various dates as under:

(i) On 20th May 2010, PW-67 prepared a charge-sheet in respect of 28 accused persons who were in judicial custody and filed it in the Court on 11th June 2010.

(ii) On 1st July 2010, PW-67 prepared a supplementary charge-sheet in respect of 9 accused persons arrested later which was filed in the Court on 1st July 2010.

(iii) On 27th July 2010, PW-67 prepared a supplementary charge-sheet against A-37 and filed it in the Court on 29th July 2010.

(iv) On 16th October 2010, PW-67 prepared a charge-sheet in respect of 15 accused persons and filed it in the Court on 18th October 2010.

(v) On 28th October 2010, by the orders of the SP (Hissar), PW-67 handed over the investigation file to Inspector Vijay Pal, SHO Narnaund who filed the charge-sheet *qua* the remaining 50 accused persons in the Court.

Findings of the trial Court

38. The trial Court, on 24th September 2011, delivered a judgment of 1048 pages. Thereafter, on 31st October 2011, the trial court pronounced a 43 page order on sentence. As regards the incident of 21st April 2010, the findings of the trial Court were as under:

(i) Eye witnesses examined by the prosecution supported its case as regards stone pelting, rioting and arson. However, on the question of the cause for this flare up, they were either silent or inconsistent and unconvincing.

(ii) PWs 30, 32, 33, and 37 deposed that A-34 was a milkman whose shop is located on the main *gali*. PWs 32, 37 and 42 have deposed that A-34 and

A-25 were stopped by some boys of the Balmiki community as they were going towards A-34's shop. An altercation ensued in which A-36 sustained injuries as he sought to intervene.

(iii) DWs 7, 13, 16 20, 21, and 22, who were all dropped as PWs and later examined as DWs, also testify that on the morning of 21st April 2010, A-34 and A-25 were stopped by boys of the Balmiki community and a verbal and physical altercation ensued.

(iv) The above witnesses also testified that after A-25 raised the alarm as to what had happened, the members of both communities gathered at the spot and stone pelting ensued.

(v) Damage to the houses belonging to persons of the Balmiki community was not general but selective and scattered. Therefore, the possibility of those persons involved in the altercation with A-34 being targeted by the mob cannot be ruled out.

(vi) Photographic and videographic evidence did not show any *jellies*, *gandasis* or *dandas* lying around and thus called into doubt the claim that the accused had come prepared with weapons and pre-planning.

(vii) The injuries on the two deceased were blunt impact and burn injuries. This, therefore, ruled out the mob having brought *gandasis* and *jellies* with them in order to carry out a premeditated assault.

(viii) Only Dhoop Singh (PW-29) had received serious injuries from *danda* blows but no *danda* was recovered. Further, the medical record of Gulaba (PW-48) did not corroborate his oral testimony. He only had simple abrasion injuries. Had there been repeated assault as alleged, the injuries would have been severe.

(ix) The call detail records ('CDRs') of A-34 show that he was at Jind after

12:28 pm. DWs 32 and 33, being doctors in the Jind Hospital, corroborated the version of A-34 regarding A-36 receiving treatment for injuries. This proved that an incident had taken place which resulted in A-36 getting injured.

(x) As for the contention that the fact that only members and properties of the Balmiki community had suffered attacks and that this showed that the Jat community mob were first aggressors, no investigation has been made into the incident wherein A-34 and A-36 were attacked by boys belonging to the Balmiki community. This was despite it being mentioned in the case diary and receiving corroboration from various witnesses on behalf of the prosecution and the defence. It was apparent that the attack on A-34 and A-25 resulted in the mob from the Jat community gathering and pelting stones at the Balmiki community. This resulted in damage and injuries to the Balmiki community.

(xi) Many houses belonging to the Balmiki community situated on the main *gali* where the incident had taken place were untouched. No explanation was forthcoming from the prosecution as to why this was so when the allegation was that there was an indiscriminate attack on all members of the Balmiki community. This supported the second version given by the defence that the assault was selective.

39. The trial Court also set out the sequence of events as under:

(i) On 19th April 2010, an altercation between boys belonging to the Jat and Balmiki communities took place. The allegation that, thereafter, boys from the Jat community were threatening members of the Balmiki community on 20th April 2010 has not been established beyond reasonable doubt.

(ii) A-34, who happened to be a milkman in the village, did not supply milk on 20th April 2010 which left members of the Balmiki community aggrieved. As a result of this, when A-34 and A-25 were passing through the main *gali* of the village on the morning of 21st April 2010, they were stopped by persons belonging to the Balmiki community. A verbal altercation ensued regarding the non-supply of milk which then escalated into a physical assault. A-25 managed to escape the scuffle and raise an alarm. A-36, who was nearby, went to the aid of A-34 but was brutally beaten up and was rushed to hospital. Vicky (PW-42) has testified to this altercation taking place and has not been declared a hostile witness on this aspect. The testimony of Amar Lal (CW-1), the son of the deceased Tara Chand, also establishes this fact.

(iii) After A-34 and A-36 were taken away for treatment to the General Hospital in Jind, there was stone pelting from both sides which escalated further, ultimately resulting in large scale damage to many properties of the Balmiki community. A fair was scheduled at the Mata Phoolan Devi temple (managed by the Balmiki community) and thus, there were many visitors who had gathered in the main *gali* on 21st April 2010 which was not unusual.

40. It was concluded by the trial Court that the incident on the morning of 21st April 2010, in which A-34 and A-36 were attacked by persons from the Balmiki community, had been deliberately suppressed by the prosecution despite the incident finding mention in the case diary. On the various issues which arose for deliberation in this case, the specific findings of the trial Court were as under:

(i) The allegation of there being a Jat community *panchayat* held on

20th April 2010 is not substantiated by any witness belonging to any other community apart from Balmiki community. No names of the persons attending were provided nor have the time and place of the meeting been mentioned. The trial Court disbelieved the testimonies of PWs 37, 38, 40, 42, 44, 45, 46, 47, and 49 as being unreliable and held them to be improvements over their previous statements.

(ii) The rioting was caused by the incident that took place on the morning of 21st April 2010 in which A-34 and A-25 were beaten up by the Balmiki community boys rather than due to any premeditated conspiracy on the part of the Jat community. Therefore, the theory of the Jat community conspiring to attack the Balmiki community put forth by the prosecution has not been reliably established.

(iii) As regards the charge of the Jat community members forming an unlawful assembly, it was held that it stood established that A-23, A-27, A-39, A-41, A-64, A-65, and A-90 were present at the spot at the time as part of the unlawful assembly and were indulging in stone pelting.

(iv) It was further established that the following persons, apart from constituting an unlawful assembly and indulging in stone pelting, were also were involved in causing damage to the properties of the Balmiki community: A-3, A-13, A-25, A-42, and A-94 (since deceased).

(v) A-20, A-34, and A-38, apart from being guilty of the aforementioned two offences, were also guilty of setting fire to the house of Tara Chand due to which he and his daughter, Suman, were burned to death. The injuries caused by the use of weapons were not substantiated since there were no recoveries of the said weapons. However, the medical evidence corroborated the case of the prosecution that the injuries shown were as a result of stone

pelting and use of brickbats.

(vi) The relevant witnesses whose properties were damaged were not examined on account of being won over or because they did not support the case of the prosecution. Further, oral testimonies of the PWs and the site plan reveal that not all properties of the Balmiki community were damaged. The damage was selective and lent support to the defence's version that the incident was not pre-meditated and not aimed at the entire Balmiki community.

(vii) It was evident from the statements of the injured eye-witnesses such as Dhoop Singh (PW-29) and Sube Singh (PW-39) that the intention of the assembly was not to commit murder. The assembly was initially lawful which then turned unlawful as matters escalated and stone pelting ensued from both sides which resulted in damage being caused to the properties of the Balmiki community.

(viii) The post mortem reports of Tara Chand and Suman did not show injuries which proved the use of blunt force prior to their death. The fractures were found to be burn fractures. PW-29 was the only person who received grievous injuries inflicted by one "Ramphal son of Prithvi". However, in his deposition, he has stated that the said Ramphal son of Prithvi was not the same as A-20 and it was, in fact, a different person who had not been sent up for trial who had inflicted the injuries to him. Therefore, none of the accused persons could be held guilty for the offence punishable under Section 326 IPC.

(ix) The allegations made by the various PWs with regard to unlawful assembly with the common object of committing looting, robbery, and dacoity in the houses of Balmiki community were made orally and were of general nature.

PWs 49 and 50 were held to be unreliable. It was also viewed as unlikely that Tara Chand, who was a landless labourer, would have Rs.4 lakhs in his house. It was also found that the trunk of the deceased Suman, when opened, showed untouched clothes and articles.

(x) The prosecution had also failed to prove that the members of the unlawful assembly had committed criminal trespass with the use of deadly weapons. It stood established that the common object of the unlawful assembly was only to cause simple injuries and consequential damage to the properties of the Balmiki community but some persons went beyond this common object and committed crimes of a graver nature than those of the general mob which ultimately resulted in the death of the two deceased.

(xi) As regards the unlawful assembly having the common object of murdering Tara Chand and Suman by intentionally causing their death by setting them ablaze, it was held that there being merely a fight between members of both communities, Exception IV to Section 300 IPC would not be attracted. No grave and sudden provocation could be said to exist as there was sufficient cooling time.

41. The trial Court has also found, however, that the intention and *mens rea* for the offence under Section 300 IPC has not been established. Its specific findings on this aspect of the case are as under:

(i) PWs 49 and 50 and CW-1 (family members of the deceased) have testified that the deceased were beaten, had oil sprinkled on them and were then pushed into the burning house. However, no other PWs corroborate this evidence. Instead, other PWs have only testified that the house of Tara Chand was set ablaze in which he and Suman died. The dying declaration of

Tara Chand also did not support their testimony.

(ii) The FSL report also does not support the prosecution version. No hydrocarbons of petroleum were found in the ashes lifted from the spot or on the clothes worn by Suman.

(iii) The post-mortem reports of both deceased persons don't show any blunt force injuries. This brings into question the testimony that they were beaten with dandas.

(iv) Locking of doors of the rooms where Tara Chand and Suman were present from the outside is not established. Had the doors been locked, Tara Chand would not have been able to run to the house of his neighbour. The retrieval of Suman's body was done by breaking through the roof of her room. It is possible that the door was locked from inside by Suman due to fear of the ongoing riot.

(v) Despite allegations that persons from the Jat community had attacked with *jellies* and *gandasis*, none of the victims from the Balmiki community have been shown to have any incised/stab wounds. Furthermore, there are no recoveries made of such weapons.

(vi) Sube Singh (PW-39) has also testified that the assailants from the Jat community left him alone on his pleading. Pictures show him in front of his house which appears to be undamaged. Only his motorcycle was burned when stacks of domestic fuel kept near it were burned and the flames engulfed the motorcycle as well.

(vii) The stone pelting appears to have occurred in the heat of passion as a rumour had spread about A-34 being killed by the boys of the Balmiki community. This resulted in the mob from the Jat community burning stacks of cowdung cakes and dried sticks which were kept at various places in the

Balmiki *basti*.

(viii) Neither motive nor intention on the part of the mob to murder the two deceased has been established. If the mob had an intention to commit murder, the members of the Jat community would have come armed with dangerous weapons. However, no such weapons have been found. Rather, it appears that the deceased were killed as they happened to be inside the house when it was set on fire.

(ix) It had not been shown that the accused persons knew of the presence of the two deceased in the house as it was being burned. The theory of the two deceased being beaten, sprinkled with petroleum and then pushed and locked into the burning house is not believable for want of reliable testimony to that effect and the absence of hydrocarbons of petroleum on the clothes of the deceased Suman. Furthermore, the post mortem report records that no blunt force injuries were found on the bodies of either deceased and the burns which caused their death were not oil burns but ordinary in nature. There is no other forthcoming evidence to show that the accused persons were aware of the presence of the deceased in the house.

(x) The act of setting a dwelling house on fire was held to be one regarding which any reasonable person may be deemed to possess the requisite knowledge that it is likely to cause death of the person residing there. Therefore, the case was held to fall within the purview of Section 304, Part II IPC and not of the offence punishable under Section 302 IPC.

42. With regard to the alleged offences punishable under Section 3 POA Act, it was held by the trial Court that Section 3(1)(xv) POA Act would not apply where members of the SC/ST community decided to leave their homes of their own

volition. The threat that compelled them to do so has to be real and actual and not imaginary or illusory. It was further held that the allegations made by Sushil (PW-25) and Vicky (PW-42) about the warnings issued by the Jat community on the public announcement system to the effect that they would get their boys released and that only thereafter the victims moved out of the village have not been substantiated beyond reasonable doubt. It appears unlikely that this could have happened as the local administration had made security arrangements in the village and a police post was erected specially in the village and a CRPF company had been deployed. However, the trial Court held that A-3, A-13, A-25, A-42, and A-94 had caused mischief by fire with the knowledge that their acts were likely to cause damage to the properties of Dhoop Singh (PW-29), Sanjay (PW-44), Gulaba (PW-48), Manoj (PW-45), Sube Singh (PW-39), Sushil (PW-25), Satyawan (PW-47), and Vijender (PW-40) and were, therefore, liable for the offence punishable under Section 435 IPC and Section 3(2)(iii) POA Act.

43. The trial Court held that A-20, A-34, and A-38 had committed mischief by fire with the knowledge that such acts would cause the destruction of the dwelling house of the deceased Tara Chand and his wife, Kamala (PW-50), both of whom belonged to the Balmiki community, and were therefore liable for the offences punishable under Section 436 IPC and Section 3(2)(iv) POA Act. In light of the fact that the prescribed punishment for the offence punishable under Section 436 IPC is imprisonment which may extend to a period of 10 years or more, Section 3(2)(v) POA Act would apply by default.

44. In its judgment, the trial Court also noted its dissatisfaction with the manner in which the investigation of the present case had been carried out. It noted the

following failures of the investigating agency and the prosecution:

(i) Suppression by the investigating agency of the incident on the morning of 21st April 2010 in which A-34 and A-25 were accosted by members of the Balmiki community resulting in an altercation in which A-34 and A-36 received injuries. This incident caused the spread of a rumour that A-34 had been killed by members of the Balmiki community.

(ii) Separation of the chargesheets with respect to the two incidents that occurred on 19th April 2010 and 21st April 2010 respectively. This weakened the prosecution's own argument that the former incident was the cause for the latter.

(iii) The complainant in the present case, Karan Singh (DW-13), had turned hostile against the prosecution case and appeared as a DW. Furthermore, Veerbhan, who was injured in the 19th April 2010 incident, also turned hostile in the trial proceedings before the Hissar Court and has not been examined in the subsequent trial at the Rohini Court. Yogesh (PW-7) has also turned hostile and did not identify any of the accused persons in Court.

(iv) Of the 95 PWs cited by the prosecution, only 43 were examined. Out of these 43, only 22 supported the case of the prosecution while the remaining PWs turned hostile either on the aspect of identification of the accused persons or on the aspect of the entire incident itself. On the other hand, persons who had earlier been cited as PWs appeared as DWs (such as DWs 7, 13, 16, 20, and 22) and even supported the defence version of the incident whereby it was the boys of the Balmiki community who instigated the incident.

(v) PWs 42, 49, 50, 30, 45, 40, 36, and 33 have made huge exaggerations and improvements and have made wholesale dock identifications which did not

inspire the confidence of the trial Court. Further, even where PWs have supported the case of the prosecution, their presence at the spot at the time of the incident has not been established and none of them appear to have injury marks which would suggest they were present during the rioting. On the contrary, PW-47, whose presence is undisputed, was unable to identify any of the accused.

(vi) The possibility of the exhibits lifted from the scene of crime being tampered with cannot be ruled out considering that Register No.19 from the *malkhana* which was produced in Court had been tampered with.

(vii) Despite the police contingent from PS Narnaund reaching the spot at 12:30 pm, none of the assailants were shown to have been apprehended at the spot. Moreover, despite allegations of the use of dangerous weapons, none have been recovered from the spot. The statements recorded under Section 161 Cr PC do not reveal much about the incident and have been recorded in mechanical manner. Even more damningly, none of the arrests have been made on the pointing out by the victims who purportedly named the accused persons in their statements to the police. No TIP was conducted.

(viii) The prosecution failed to preclude the possibility of witnesses being won over and their evidence being tampered with by recording their statements under Section 164 Cr PC.

(ix) It appears that no expert/crime team was called to the spot which resulted in unskilled/untrained personnel being responsible for lifting forensic samples. No explanation is forthcoming from the prosecution as to how the fire spread in the absence of petrol, kerosene, or diesel.

45. The trial Court, however, did not accept the contention of the defence that the

faulty investigation should result in the benefit of doubt being granted to the accused persons. It found that several PWs had supported the prosecution on material aspects of its case and that their evidence in that regard had received corroboration from the medical evidence on the record.

Summary of trial Court's findings

46. The conclusive findings of the trial Court regarding the guilt of the accused can be summarised thus:

(i) The presence of 81 of the accused persons was found not to have been established at the time of the incident. The allegations against these accused persons were found to be unsubstantiated and unproven. They were, therefore, acquitted of all charges.

(ii) It was concluded that the allegations made against A-37, SHO of PS Narnaund at the time of the incident, only emerged after the intervention of political and community leaders. The charges against him were framed on the basis of statements under Section 161 Cr PC which were later denied by the witnesses who purportedly named them. It was found that no reliable evidence regarding his involvement emerged from the record and therefore, the allegations against him were unsubstantiated. He was, therefore, acquitted of all offences with which he was charged.

(iii) The presence of A-23, A-27, A-39, A-41, A-64, A-65, and A-90 at the spot at the time of the incident were found to be established. It also stood established that they were part of the unlawful assembly and were indulging in stone pelting. Thus, they were held to be guilty of the offences punishable under Sections 147, 323/149, and 427/149 IPC.

(iv) The presence of A-3, A-13, A-25, A-42, and A-94 at the spot at the time of

the incident were found to be established. It also stood established that they were part of the unlawful assembly and were indulging in stone pelting and causing damage to the properties of the Balmiki community. Thus, they were held to be guilty of the offences punishable under Sections 147, 323/149, 427/149, and 435/149 IPC and Section 3(2)(iii) POA Act.

(v) The presence of A-20, A-34, and A-38 at the spot at the time of the incident were held to be established. It also stood established that were part of the unlawful assembly and were indulging in stone pelting, causing damage to the properties of the Balmiki community, and setting fire to the house dwelling of Tara Chand which resulted in the death of Tara Chand and his daughter, Suman. Thus, they were held to be guilty of the offences punishable under Sections 147, 323/149, 427/149, 436/149, and 304(II)/149 IPC and Section 3 (2) (iv) POA Act.

Submissions on behalf of the State

47. Ms. Richa Kapoor, learned Special Public Prosecutor ('SPP') appearing for the State of Haryana, submitted as under:

(i) The trial Court erred in not appreciating that the incident which occurred on 19th April 2010 was a prequel to the main incident that occurred on 21st April 2010, the preparation for which was done on 20th April 2010. The prosecution had clearly established the prior meeting of minds and common object and motive for the offences committed on 21st April 2010. It was submitted that the finding of the trial Court that the incidences of 19th and 20th April 2010 were not proved was totally erroneous especially since the trial Court itself, while examining the effects of complainant Karan Singh (DW-13) and Veer Bhan turning hostile, held that the FIR was not

substantive evidence and the incident of 21st April 2010 had been proved through the deposition of the injured eye witnesses and other PWs.

(ii) The depositions of PWs 13, 25, 29, 30, 32, 33, 36-40, 42-47, 49, and 50 as well as CW-1 showed that the incident of 21st April 2010 had been proved by the prosecution beyond reasonable doubt.

(iii) Both dying declarations made by the deceased Tara Chand were consistent, clear, unambiguous and inspired confidence. The depositions of PWs 55, 64, 66, and 68 as well as to that of CW-1 were corroborative of this. The trial Court erred in doubting the probative value of the dying declarations. Reference was made to the decision of Supreme Court in ***Dhan Singh v. State of Haryana (2010) 12 SCC 277***.

(iv) Detailed submissions were made *qua* each of the PWs and the pleas of the accused persons in defence. On the charge of criminal conspiracy, it was submitted that unlawful agreement was the gravamen of the crime of conspiracy and not its accomplishment. It was submitted that the evidence of conspiracy need not be formal or expressly made out. It could be inferred from the circumstances, especially the declarations, acts, and conduct of the conspirators. It was further submitted that the offence of criminal conspiracy is a continuing one and is committed whenever one of the conspirators does an act or series of acts. Reference was made to the decisions in ***Kehar Singh v. State (Delhi Admn.) (1988) 3 SCC 609***; ***Ajay Agarwal v. Union of India (1993) 3 SCC 609***; ***Abuthagir v. State (2009) 17 SCC 208***; ***K.R. Purushothaman v. State of Kerala (2005) 12 SCC 631***; and ***Suresh Chandra Bahri v. State of Bihar AIR 1994 SC 2420***.

(v) The unlawful assembly that gathered on the morning of 21st April 2010 was armed with *lathis, jellies*, oil cans and *gandasas* all of which are common

agricultural tools found in any village. They had also come prepared to pelt stones at the Balmiki community. According to Ms. Kapoor, it had been established by the prosecution that:

(a) The site of violence was the Balmiki *basti* where all the accused persons came together armed and prepared to commit the offence;

(b) All the persons who received injuries or killed or whose houses were burnt and damaged belonged to the Balmiki community apart from the large scale rioting and looting of properties belonging to the Balmiki community;

(c) The offence continued for over 3 hours where only persons belonging to the Balmiki ccommunity were targeted by the accused persons all of whom belong to the Jat community;

(d) The manner in which the Balmiki *basti* was surrounded from all sides by the persons belonging to the Jat community who were armed proves that the incident did not occur due to a sudden fight but was premeditated and pre-planned and also reflects the common intention of the unlawful assembly to burn down the entire *basti*;

(e) Caste-based exhortations were made while indulging in arson, looting, rioting, injuring/killing persons and damaging their properties by all the accused persons belonging to the Jat community which was dominant in village Mirchpur;

(f) The livelihoods of the victims belonging to the Balmiki community were dependent upon the Jat community who could not tolerate the insult made by the dog belonging to the lower caste and thus decided to take revenge;

(g) No cross-complaint was filed by the accused persons belonging to the

dominant caste and there were no injuries reported as a result of stone pelting contrary to the claim made by the defence that there was stone pelting from Balmikis as well;

(h) Burning of the houses of the Balmiki community was selective and occurred in pockets. The damage is not confined to any particular direction but has occurred on various locations in the *basti* clearly indicating that the common object of all the accused persons who belonged to the Jat community was to target the Balmikis and their property;

(j) Damage caused by the accused persons who were indulging in rioting, arson, looting and burning of Balmiki persons and their properties by surrounding them from three directions is writ large on this case;

(k) Intention of the accused persons, i.e. to burn the entire Balmiki *basti* by surrounding it from all sides and attacking the Balmikis by burning them alive, is clear. The manner in which the offence has been committed and has been deposed to by the witnesses establishes that the accused persons were uniformly prepared to commit the offence in furtherance of the aforementioned common intention.

(vi) The trial Court had erred in not appreciating that Section 149 IPC provided for vicarious liability. The applicability of Section 149 IPC had its foundation in constructive liability which was the *sine qua non* for its operation. The emphasis in this provision should be on the 'common object' with the 'object' referred to meaning the purpose or design of the unlawful assembly which is shared by all its members. Once membership to an unlawful assembly was established *qua* an individual, it would not be incumbent upon the prosecution to establish any particular overt act

committed by that individual. In other words, it is not necessary that each member of the unlawful assembly commits an overt act to attract the sanction under Section 149 IPC. The unlawful agreement and not its accomplishment is the gist and essence of the crime of conspiracy. Reference was made to the decisions in ***Mahmood v. State of U.P. (2007) 14 SCC 16***; ***Rabindra Mahto v. State of Jharkhand (2006) 10 SCC 432***; ***Rajendra Shantaram Todankar v. State of Maharashtra (2003) 2 SCC 257***; ***Munivel v. State of Tamil Nadu (2006) 9 SCC 394***; ***Md. Ankoos v. Public Prosecutor, High Court of A.P. (2010) 1 SCC 94***; ***State of UP v. Dan Singh (1997) 3 SCC 747***; ***Masalti v. State of U.P. AIR 1965 SC 202***; and ***Adalat Pandit v. State of Bihar (2010) 6 SCC 469***.

(vii) As regards the FSL report giving a negative finding on the presence of hydrocarbons in the 19 samples sent to it, it is submitted that the exhibits sent to the FSL were ashes of fire debris mixed with soil, jute bag, coal piece, motorcycle, stone pieces, rusted iron nail, rope etc. which were not representative of the samples of the houses which were burnt by sprinkling petrol, kerosene, diesel. It is submitted that it was quite possible that the samples which were collected from the fire debris were not the remnants of that fires where specifically the petrol, kerosene, diesel etc. was sprinkled to put the entire house on fire. The exhibit containing ash taken from motorcycle also showed no presence of hydrocarbons. Further, in the case of any conflict between ocular evidence of eye witnesses and medical/forensic evidence, the Court would have to go by the evidence which inspires more confidence. In such cases, the medical/forensic evidence was not to be given primacy. Reference is made to the decisions in ***State of M.P. v. Dharkole (2004) 13 SCC 308***; ***Ram Swaroop v. State of Rajasthan (2008) 13 SCC

515; and ***Mallappa Siddappa Alakanur v. State of Karnataka (2009) 14 SCC 748***.

(viii) It is submitted that when the eye witness testimony available on the record was credible and trustworthy, a medical opinion pointing to alternative possibilities should not be accepted as conclusive. Such evidence must be tested for its consistency, both internally and with the undisputed facts.

(ix) It is pointed out that the trial Court has given confusing findings. At one place it was held that "it is unbelievable that the fire which was selective was caused without the use of any fuel". It is pointed out that many of the houses burnt had a *pucca* construction. The eye witness testimony was consistent on the fact that the accused persons were carrying cans full of kerosene oil, petrol and diesel; they sprinkled the said inflammable material on the houses of Balmikis and set them on fire. It was preposterous to suggest to the PWs in the cross-examination that the Balmikis had burned their own houses in order to claim compensation.

(x) It is submitted that the falsehood of defence added credibility to the ocular evidence which favoured the prosecution's case. The photographic and videographic evidence also proved that fire was set to the houses of Balmiki in different pockets. This was not only selective but the rioters went inside the houses after crossing the courtyards to burn them and houses along with other moveable properties.

(xi) It is submitted that the mere fact that the accused persons were not specifically named by PWs in their respective statements under Section 161 Cr PC would not *per se* render such witness not to be creditworthy and reliable. In this context, reference was made to the decisions in ***Md. Alamgir Sani v. State of Assam (2002) 10 SCC 277*** and

Kazem Sk. @ Kamruzzaman @ Kazeman v. State of W.B. 2008 Cri LJ 4474 (DB-Cal) wherein it was held that an omission to mention a fact in the statement under Section 161 Cr PC cannot be said to be a contradiction. Reference was also made to the decisions in ***Baladin v. State of UP AIR 1956 SC 181*** and ***Naresh Das v. State of Tripura 2007 Cri LJ 2269 (DB-Gau)***.

(xii) Referring to the decision in ***Premachand S. Bansode v. State of Maharashtra 2007 Cri LJ 142 (SJ-Bom)***, it is submitted that in the matter of appreciation of evidence, there could not be any hard and fast rule. It is submitted that the trial Court ought not to have discarded that part of the testimonies of the above PWs which was not found incorporated in their statements to the police under Section 161 Cr PC. Therefore, it is argued, that the characterisation of PWs 28, 38, 39, 40, 42, 43, 44, 45, 46, 47, 48, and 49 and CW-1 as not totally reliable for the aforementioned reason was erroneous. The finding of the trial Court that PWs 10, 13, 30, 32, 33, 36, 37, and 50 are unreliable is also similarly untenable. Further reference is made to the decisions in ***Ramesh v. State of U.P. (2009) 15 SCC 513*** and ***C. Muniappan v. State of Tamil Nadu (2010) 9 SCC 567***.

(xiii) According to Ms. Kapoor, there was sufficient evidence against each of the 57 accused to whom notice had been issued. Likewise, even the Respondent in the other appeal, viz. A-58, was consistently identified by PWs 36, 38, 42, and 50 and they too had attributed a specific role to him in their depositions before the Court.

(xiv) The omission on the part of the prosecution to conduct a TIP did not make the dock identification of the accused persons by various PWs inadmissible. The trial Court should have considered all aspects of the matter in the light

of the evidence on record. Reliance was placed on ***Mulla v. State of U.P. (2010) 3 SCC 508***; ***Matru @ Girish Chandra v. State of U.P. (1971) 2 SCC 75***; ***Santokh Singh v. Izhar Hussain (1973) 2 SCC 406***; ***Pramod Mandal v. State of Bihar (2004) 13 SCC 150***; ***Anil Kumar v. State U.P. (2003) 3 SCC 569***; and ***Sidhartha Vashisth @ Manu Sharma v. State (NCT of Delhi) (2010) 6 SCC 1***.

(xv) Ms. Kapoor then moved on to the applicability of the POA Act, the significance of which was reiterated in the case of ***State of M.P. v. Ram Krishna Balothia (1995) 3 SCC 221***. Reference was also made to Section 8 of the POA Act as regards the presumption as to offences. The written submissions filed before this Court by the learned SPP go on to state:

> "In the instant case, the evidence led by the prosecution, enough evidence has surfaced which is not denied by the defence that victims in the crime were of dalit community i.e. 'Balmiki' community. The fact that members of 'B' community were the victims and the members of 'J' community were aggressors cannot be denied. All the accused persons/respondents herein being member of unlawful assembly and in furtherance of common object of the assembly forced to the member of Scheduled Caste i.e. Dalit (also known as 'Balmikis') viz. Gulaba, family of Tara Chand, Sanjay, Satyawan, Dilbagh, Manoj, Dhoop Singh & Ors. to burn their houses, and forced them to leave their houses with intent to humiliate and committed mischief by fire and also caused damage to the houses used as human dwelling belonging to Schedules Caste. The entire dalit *basti* was surrounded by hundreds of rioters all belonging to dominant community i.e. jat community who committed arson, looting, stone pelting, burning the persons alive and their dwelling house alongwith their movable properties to ashes for hours together.
>
> That after investigation, charge sheet was submitted before the designated court under this Act and Hon'ble Supreme Court

thereafter in view of Section 14 of the said Act transferred the case to the Special Court designated at Delhi under SC/ST Act by notification in the official gazette by the Chief Justice of Delhi High Court. The Special Public Prosecutor was appointed under the said Act.

The charges were framed under the SC/ST Act and the accused persons have not challenged the order framing charges.

In fact the defence has produced the witness DW-38, who is District Welfare Officer, Hissar and was summoned by the defence to bring the record pertaining to details of compensation provided to the victims/affected families of Mirchpur Village in respect of incident dated 21.04.2010. His testimony is at page no.7712. He has proved on record the documents Ex.DW38/A (collectively) from page 7910 to 7924 which is compensation given to Balmikis family of Mirchpur (families of PW's under the SC/ST Act).

Thus in view of the evidence which has been surfaced by the prosecution on record and defense evidence being led that victims in the incident of 21.04.2010 were families of Balmikis given compensation under the SC/ST Act, the provisions of SC/ST Act would be clearly applicable. That all the 57 respondents/accused persons and Jasbir @ Lilu would be liable for conviction under the provisions of SC/ST act for which they were charged and all other offences punishable under Indian Penal Code."

(xvi) It is submitted that the device used by the PP in the trial, with the permission of the Court, to enable to PWs to refresh their memory cannot be held to be a leading question. Reference was made to Sections 142 and 154 of the Evidence Act and the decisions in ***Sat Paul v. Delhi Administration (1976) 1 SCC 727*** and ***Varkey Joseph v. State of Kerala AIR 1993 SC 1892***. It is submitted that:

"The Ld. Trial Judge is enjoined with duty to explore every

> venue open to open to him in order to discover the truth and advance the cause of justice and by virtue of Section 165 of Cr.P.C., the Ld. Trial Judge is expressly invested with right to put question to the witnesses and he may ask any question he pleases, in any form at any time from any witness or the parties about any fact. Here in this case the defense never objected the question being put by Ld. Prosecutor with the permission of court only to refresh the memory of the witness. Thereafter, the witness has been cross examined at length by the defense. The contention of question being leading is raised first time at the appellate stage is liable to be rejected. There is no irregularity in the Trial and there is no miscarriage of justice."

(xvii) Ms. Kapoor finally submitted that on the facts and circumstances of the case, the offence punishable under Section 302 IPC was clearly attracted. Referring to the decision in ***Ram Bihari Yadav v. State of Bihar (1998) 4 SCC 517***, it was submitted that the story of the prosecution would have to be examined *de hors* lapses or omissions in the investigation.

Submissions on behalf of the complainants

48. Ms. Anubha Rastogi and Mr. Shreeji Bhavsar, learned counsel appearing for the original complainants/Appellants in Crl.A.139/2012, submitted as under:

(i) The defence has for the first time submitted in this Court that the POA Act would not be applicable since the incident in question was merely a quarrel between two groups, the members of each of which happened to belong to two different castes as a matter of chance and that there was nothing to show that the Balmiki community was attacked due to their belonging to that particular caste. The precise submission in this regard of the complainants reads thus:

> "It is submitted in response that the FIR when registered was done so under the SC/ST Act r/w IPC provisions, the chargesheet that was filed contained the SC/ST Act provisions,

the case was being heard by a Special Court as per the provisions of the SC/ST Act, the trial was transferred on the directions of the Supreme Court from the Special Court in Hisar to a Special Court in Rohini, Delhi. The charges were framed which included the SC/ST Act provisions. The order framing charges was not challenged by the accused. All witnesses, including the prosecution witnesses who have turned hostile completely and the defense witnesses have testified that the victim community belonged to Balmikis and the accused persons belonged to the Jat community. Balmiki is a scheduled caste as per The Constitution of India and are notified as a scheduled caste in most parts of the country. Lastly the victims were given compensation as per the provisions of the SC/ST Act. This fact has been brought on record by the defense. It, therefore, does not augur well that the defense raises this issue in appeal."

(ii) In the present case the common object of the unlawful assembly was evident from the fact that some of them were armed with deadly weapons. None of them were curious onlookers or spectators to the incident that happened on 21st April 2010. In highlighting the relationship between Section 149 IPC and Section 120B IPC, learned counsel referred to the decision in ***Rabindra Mahto v. State of Jharkhand*** (*supra*) and ***Dharnidhar v. State of UP (2010) 7 SCC 759***. Reference is also made in the context of the POA Act to the decision in ***State of U.P. v. Dan Singh*** (*supra*) and ***State of Maharashtra v. Som Nath Thapa (1996) 4 SCC 659***.

(iii) Referring to ***K.R. Purushothaman v. State of Kerala*** (*supra*), it is submitted that the agreement among conspirators could be inferred by necessary implication. The existence of the conspiracy and its objects are usually deduced from the circumstances of the case and the conduct of the accused persons involved in the conspiracy.

(iv) In respect of Section 149 IPC reference was made to the decisions in

Pandurang Chandrakant Mhatre v. State of Maharashtra (2009) 10 SCC 773; ***Md. Ankoos v. Public Prosecutor, High Court of A.P.*** (*supra*); ***Mukteshwar Rai v. State of Bihar AIR 1992 SC 483***; ***State of A.P. v. Rayaneedi Sitharamaiah (2008) 16 SCC 179***; ***Musakhan v. State of Maharashtra (1977) 1 SCC 733***; and ***Ramappa Halappa Pujar v. State of Karnataka (2007) 13 SCC 31***.

(v) It is submitted that the defence has for the first time raised an argument of the SC/ST Act not being applicable but, it is pointed out, that no challenge was made by the defence to the order framing charges. It is also undisputed that the Balmiki caste is notified as a Scheduled Caste in the State of Haryana and furthermore, as has been brought on the record by the defence, the victims were given compensation under the POA Act.

(vi) Attention is brought to the orders of the trial Court dated 23rd, 29th, and 30th March 2011 as well as 8th April 2011. It is submitted that from these orders it is apparent that PWs were under immense pressure from the accused. Reference has been made by the trial Court to PWs who reached the Court premises in the company of the accused persons who subsequently turned completely hostile to the prosecution case. It is also pointed out that the trial Court had recorded that Veerbhan who was supposed to testify as a PW did not reach the trial Court and returned to his village without giving evidence.

(vii) It is further submitted that although the incident on 19th April 2010 was recorded in a separate FIR and tried separately, it is an admitted position of fact which was the cause of the incident dated 21st April 2010.

49. The submissions on behalf of the accused persons shall be dealt with as and

when their specific cases are discussed. The Court would first like to deal with the broad issues that arise in the present case.

Causal link between incidents of 19th and 21st April 2010

50. In the present case, the charge of criminal conspiracy made against the accused persons is based on the prosecution's claim that the violence perpetrated by members of the Jat community on 21st April 2010 was an act of planned retribution carried out in response to the incident which occurred on 19th April 2010. The trial Court, however, has taken a different view in concluding that the violence that occurred on 21st April 2010 was to be viewed as the consequence of a fight which broke out that morning between members of both communities.

51. The FIR in relation to the incident of 19th April 2010 was registered separately and the trial subsequent thereto ended in the acquittal of five accused persons (who are also accused herein) due to the two main injured complainants, viz. Karan Singh (DW-13) and Veerbhan, turning hostile against the case of the prosecution therein. The prosecution's case is that, in response to the perceived slight that had occurred on 19th April 2010, a pre-meditated attack was planned by members of the Jat community whereby they sought to surround the Balmiki *basti* from all sides and burn the houses of the Balmikis and attack them with lathis, *jellies*, and *gandasis*. The prosecution does not accept the position of the defence that the violence that transpired on 21st April 2010 was due to a reaction on the spur of the moment to a fight that had broken out in the main *gali* between members of the Balmiki community and A-34, A-25, and A-36 on the morning of 21st April 2010.

52. In the opinion of this Court, when the events that transpired at village Mirchpur during 19th to 21st April 2010 are viewed in their entirety, it is impossible to concur

with the view of the trial Court that the respective incidents that took place on the above dates are unrelated. Even though the charge sheet in the present case refers exclusively to the incident of 21st April 2010, the clear and cogent statements of multiple key PWs in the present case cannot be ignored as has been done by the trial Court. In fact, the trial Court itself has observed that an incident involving A-34 and DW-13 and Veerbhan had taken place on 19th April 2010.

53. Several witnesses have spoken to what transpired on both dates and their testimonies in that regard remain unshaken. It is clear that the incident of 19th April 2010 was because of a disagreement that arose due to a barking dog and the harsh treatment of said dog by boys of the Jat community who were intoxicated having consumed alcohol. It is also beyond question that DW-13 and Veerbhan were brutally beaten when they went to the house of A-34 to amicably settle the matter. Several witnesses have spoken of a tense atmosphere having gripped the village on 20th April 2010 as the members of the Balmiki community became increasingly apprehensive of retributive action from the the dominant Jat community.

54. In this context, it should be noticed that DW-13, despite being one of the original complainants, did not appear as a PW but as a DW. He clearly stated that on 19th April 2010, when his brother Jai Prakash's dog started barking loudly and he stepped out to check the source of the commotion, he found boys from the village, some of whom were Jats and others Balmikies, quarrelling on that account. He went back to sleep after separating them. Again, after some time, he heard the noise of a tractor passing through the *gali* in front of his house and was informed that a large number of boys were collecting outside and that they should be made

to disperse. Since DW-13 was a member of the Block Samiti, he went to the house of Veerbhan who was also a member since he wanted to ensure that there would be no breach of peace. Both of them then went to the place where the boys were standing. However, before DW-13 and Veerbhan could reach the boys, stones were thrown at them by the said boys. According to DW-13, it was 9 pm and was completely dark and he could not recognise any of them. Both DW-13 and Veerbhan then retreated. According to DW-13, Veerbhan sustained head injuries on account of the stone pelting. DW-13 also sustained injuries on his left side. DW-13 along with two others took Veerbhan to the Narnaund Hospital from where he was transferred to the General Hospital at Hissar.

55. As regards the incident of 20th April 2010, DW-13 proved that Veerbhan got discharged from the General Hospital at Hissar. He also states that he went to the PS on that date and orally informed the officer about the incident which took place on 19th April 2010. Whilst DW-13 had stood outside the PS, Veerbhan had gone inside.

56. As regards the situation in the village on 20th April 2010, PWs 37, 38, and 42 speak about the "atmosphere of fear" in the village. A-34 allegedly stopped the supply of milk in the village and Jat boys, having consumed alcohol, were moving around in groups and threatening the Balmikis. PW-37 stated that "on 20.04.2010 we came to know in the village that these boys from the Jat community would again commit some problem due to which reason we called Karan Singh and Veer Bhan back to the village". It was further elicited in PW-37's cross examination that "Rajender son of Pale used to supply milk in the village. It is correct that he did not supply to the Balmikis on 20.04.2010". PW-38 also stated that "on the next day

i.e. 20th there was a talk in the village by the boys belonging to the Jat community threatening that they would burn the houses of the '*churas'* and would throw them out of the village '*chura ne kadage, chura ne ghara ne aaglageye gai*'".

57. Thus, in the opinion of this Court, it would be remiss to ignore the clear causal link that exists between the incidents that occurred on 19th, 20th, and 21st April 2010. The trial Court has erred in disregarding this aspect of the present case. It is not beyond reason that in a village like Mirchpur where most people are known to each other, an incident such as the one which admittedly took place on 19th April 2010 could have led to heightened tensions between the two communities. The incident on 21st April 2010, therefore, has to be viewed in the context of the prevailing tension due to the perceived slight against the Jat community by persons from the Balmiki community which occurred on 19th April 2010.

The incident of 21st April 2010: the Trial Court's findings

58. As for the incident of 21st April 2010, the trial Court seems to have accepted the alternate contention of the counsel for the accused that the events that transpired on that date had nothing to do with the incident of 19th April 2010 or the conditions that prevailed on 20th April 2010. According to the trial Court, as a result of a physical altercation that took place between A-34 and A-25 and some Balmiki boys on the morning of 21st April 2010 and A-34 running into the Jat *basti* shouting that he had been beaten by the Balmikis that the subsequent attack on the Balmiki *basti* took place. According to the trial Court, there had been deliberate supression by the police in its investigation of this incident on the morning of 21st April 2010.

59. In the narration of facts by the trial Court, there have been 11 specific stages noticed as under:

(i) Some incident of quarrel between the boys belonging to the Balmikis and the Jats took place in the morning of 21st April, 2010 which aggravated into large scale rioting and violence.

(ii) The testimonies of Mahajan (PW-38), Vicky (PW-42), Sajjna (DW-7), Ajmere (DW-16), Ram Niwas (DW-20) and Dharambir (DW-21) revealed that on 21st April 2010 there was an incident which occurred when A-34 was returning to the village on a *baggi* and was passing through the main *gali* on which houses of those belonging to the Balmiki community were situated. He was stopped by some boys belonging to the Balmiki community after which there was an altercation between A-34 and a number of Balmiki boys after which he ran away from that place whilst raising an alarm "*churya ne mar diya, churya ne mar diya*".

(iii) The evidence of Sajjna (DW-7), Ajmer (DW-16), Ram Niwas (DW-20), Dharambir (DW-21), and Praveen (DW-22) speaks about A-34 and A-25, who both belonged to the Jat community, being stopped by the Balmiki boys after which there was a verbal and physical altercation. A-25 managed to free himself and raised a hue and cry whilst shouting "*Rajender ko Balmikiyone maar diya*". A-36, who also belongs to the Jat community, was a bystander who came to the aid of A-34 but was also attacked with a *jellie* (a pointed implement commonly used for agricultural purposes) as a result of which he sustained injuries around his eye. After this, both A-34 and A-36 were allegedly rushed to the hospital by Prem Singh, the father of A-36.

(iv) On the alarm being raised by A-25, a large number of residents of the village gathered at the spot where the incident took place after which there were tensions in the village as the Balmikis thought they were going to be attacked and stone pelting started from both sides. The matter thereafter got aggravated and subsequently resulted in damage to the properties of persons belonging to the Balmiki community, particularly around the area where the incident took place.

(v) It is evident from the site plan and photographs and video recording/clippings that the damage to the houses of the persons belonging to the Balmiki Community "was not general but selective and scattered". Therefore, "the probability and possibility of the rioters having damaged specific properties particularly belonging to the boys/persons involved in the assault upon Rajender in the morning cannot be ruled out".

(vi) From the photographs and video clippings which were taken within a few hours of theincident on 21st April 2010, it was evident that large scale stone pelting and brickbatting had taken place but "not even a single photograph/video clipping reflect any dangerous weapons like *gandasis* and *jellies* lying at the spot" which were required to be shown thereby "ruling out the use of these weapons or pre-planning as alleged by the prosecution".

(vii) The medical evidence *qua* Tara Chand and Suman rules out the use of force (*dandas)* or the sprinkling of kerosene as alleged by the family of the deceased and shows that they were the only ones who had suffered burn injuries and no other victim of the other 53 alleged victims received any burn injuries. Of these 53, only Dhoop Singh (PW-29) suffered grievous injuries whereas all others reflected either simple or no injuries which could be caused by brickbats and stone pelting but not by *gandasis, jellies* and

other dangerous weapons therefore'again ruling out the possibility of pre-plan as alleged by the prosecution.'

(viii) While Dhoop Singh (PW-29) did suffer grievous injuries, he was unclear about the identity of A-20 who had attacked him. No *danda* was recovered. Further Gulaba's (PW-48) MLC did not corroborate his testimony.

(ix) From the CDRs of the mobile number used by A-34, it is evident that at 1:07 pm on 26th April 2010, he called Dr. Kuldeep (DW-33). The CDR also showed that the Dr. Rajesh Gandhi (DW-32) attended to A-34 on a priority basis in view of the seriousness of the injuries. This evidence proved that "some incident had taken place in the morning at village Mirchpur in which Dinesh had received injuries for which he was rushed to General Hospital, Jind and was provided treatment there".

(x) Although the case diary noted the morning incident involving A-34 and A-25, this aspect was altogether suppressed and not investigated. This aspect finds corroboration in the evidence of DWs 7, 16, 20, 21, and 22. It was on the complaint of DW-13 that the FIR was registered. It was natural that after coming to know that A-34 had been injured or killed, a crowd of Jats collected at the spot of the incident which was in the Balmiki *basti*. It was from this point onwards that the stone pelting started from both sides. It was the Balmiki community who suffered the brunt of the assault. The Jat community was more aggressive and much larger in number and therefore, they were able to overawe the Balmiki community and cause damage to their properties.

(xi) None of the houses of the Balmiki community situated on the main street were touched and this could not be explained by the prosecution. This supported the second version that the assault was "selective and not general

as alleged by the prosecution".

60. Based on the above analysis, the trial Court reconstructed the sequence of events as under:

(i) The incident of 19th April 2010 was not proved beyond reasonable doubt.

(ii) In the criminal case arising out of the FIR registered for the incident on 19th April 2010, Veerbhan himself had turned hostile and was not examined in the trial in the present case.

(iii) Many PWs who had not been declared hostile have themselves supported different versions according to which everything was peaceful on 20th April 2010.

(iv) The Balmiki community members were aggrieved by A-34 not supplying milk to them on 20th April 2010.

(v) A-34 and A-25 were passing through the main *gali* as they returning home from the fields on 21st April 2010 when both of them were stopped by boys from the Balmiki community. A verbal altercation ensued and later, the dispute escalated into physical violence. The Balmiki boys assaulted A-34 and A-25. A-25 managed to escape and ran into the Jat *basti* and raised an alarm by shouting that A-34 had been assaulted.

(vi) A-36 rushed to the rescue of A-34 but was brutally beaten and assaulted with *jellies* as a result of which he sustained injuries in his eye and had to be rushed to the hospital.

(vii) Vicky (PW-42) also admitted that an altercation had taken place on 21st April 2010 when A-34 was attacked by the Balmiki boys and that A-36 in trying to save him also suffered injuries and that there a rumour had been spread that A-34 had been killed. PW-42 had not been declared hostile.

(viii) The testimonies of many eye witnesses including CW-1 talks of the altercation between A-34 and a number of boys of the Balmiki community. CW-1 tried to evade and brush aside the queries in this regard.

(ix) It stood established from the testimonies of various eye witnesses, including PWs who were not examined as such but later appeared as DWs, that after A-34 and A-36 sustained injuries and were taken away for treatment, there was stone pelting from from both communities which aggravated into large scale damage being caused to the properties belonging to the Balmiki community including the burning down of the house of Tara Chand in which he and his daughter Suman both lost their lives.

(x) A-34 and A-36 had been taken to the General Hospital in Jind for treatment. A-36 had to be hospitalised and the scars of his injuries were still visible when DW-32 was examined in Court.

(xi) There is a temple of Mata Phoolan Devi on the outskirts of the village. The management of the temple and offering rights were with the Balmiki community for 20 years. Every Wednesday there was a *mela* in the temple at which a large number of persons from Mirchpur itself and also from the neighbouring villages would come for *darshan* (patronage). The day of the violence, i.e. 21st April 2010, was also a Wednesday and therefore, a number of visitors had gathered in the village which explained the presence of a large number of persons in the village, particularly at the main *gali* which was to the side of the Balmiki *basti*.

This Court's analysis of the incidents of 21st April 2010

61. This Court now proceeds to deal with each of the above conclusions arrived at by the trial Court. In the first instance, it must be noted that the trial Court has

erred in completely disassociating the incident of 19th April 2010 from the incident of 21st April 2010 only because a separate FIR had been registered in respect of the incident of 19th April 2010. In the criminal trial arising out of the incident of 19th April 2010, by the judgment dated 27th March 2012, the learned Additional Sessions Judge at Hissar acquitted the seven accused in that case, viz. Sumit son of Satyawan (A-27 in SC No.1238/2010), Rajender son of Pale (A-34 in SC No.1238/2010), Ajeet son of Sukhbir (A-9 in SC No.1238/2010), Deepak @ Sonu son of Kishan (A-14 in SC No.1238/2010), Pawan @ Tinku son of Sewa Singh (A-96 in SC No.1238/2010), Virender @ Kala son of Ram Mehar, and Monu son of Suresh (A-39 in SC No.1238/2010). The main reason for the said acquittal was that Veerbhan, who was an injured witness and the complainant in that incident as clearly spoken to by DW-32, turned hostile. Veerbhan was examined as PW-1 in that case. Karan Singh (DW-13) was examined as PW-2 and he too turned hostile. As a result, the case resulted in the acquittal of the accused.

62. Strangely, Karan Singh (DW-13) has been examined as a DW in the present case and his examination-in-chief and cross-examination took place on 1st June 2011, i.e. before the judgment of acquittal in the aforementioned case. What is apparent, therefore, is that DW-13, who was a key witness and on whose complaint the FIR was registered with regard to the incident of 19th April 2010, had been won over by the Jats even before 1st June 2011. DW-13 was among the Balmikis who stayed back in Mirchpur after the incident. It is significant to note that the trial Court itself has noted the following on page 632 of 1048 of its judgment:

> "In this regard, I may further observe that the witnesses who are presently residing at Ved Pal Tanwar Farm House are the witnesses who have supported the prosecution case and to some extent identified

> the accused before the court whereas the witnesses who are residing at village Mirchpur are the one who have not supported the prosecution case with regard to the incident but have also explained the cause of the incident as narrated in the FIR or brought out in the charge sheet filed by the prosecution but have supported the defence version of the incident. The witnesses have either not identified the accused or extremely selective while identifying some of the accused before this Court."

63. Having observed as above, it is surprising that the trial Court, while discussing these events, failed to notice that DW-13 was in fact not denying the incident of 19th April 2010. It is claimed that when he and Veerbhan went to check on the commotion that was occurring in their neighbourhood at around 9 pm on 19th April 2010, some boys threw stones at them and asked them to leave. There can be no doubt as to who those boys were and as to which community they belonged. The prosecution case in the trial at Hissar collapsed due to the failure of DW-13 and Veerbhan to identify the assailants. However, nowhere has the incident itself been denied.

64. It is, therefore, plain that even according to DW-13, there was an incident wherein his brother Jai Prakash's dog barked at the Jat boys and that is what led to an altercation and some stone pelting due to which Veerbhan suffered head injuries. DW-13 has himself spoken about Veerbhan's admission to the General Hospital at Hissar; his being discharged from there in the evening of 20th April 2010; and how he himself went to the PS on 20th April 2010 and informed the police officer about the incident of 19th April 2010.

65. The trial Court should have been alert whilst perusing this kind of evidence, particularly after it had noticed that many Balmiki witnesses had been won over by

the dominant Jat community even before the trial began. It is clear that the Balmikis who stayed back in Mirchpur had to buy peace. There is no way that they could have gone back to their homes and continued to live in the village as if nothing had happened after deposing against the Jats in the Court. The trial Court noticed that many of them were accompanied by the accused when they came to the Court to depose. It is plain that the SPP who conducted the trial felt that these members of the Balmiki community were not available to the prosecution and he was forced to drop them as PWs.

66. The trial in the present case is a striking example of how difficult it is to conduct a fair trial where charges are under the POA Act. This is despite the fact that the trial was shifted from Hissar to Delhi by the Supreme Court of India. Clearly this geographical distance was not sufficient to insulate the members of the Balmiki community from intimidation by the dominant community when it came to their fearlessly deposing in a trial. The trial Court ought to have viewed it as a failure of the criminal justice system and should have proactively worked to arrive at the truth despite these developments. Instead, the trial Court appears to have simply accepted the versions of the DWs and come to the conclusion that A-34 and A-36 were attacked by the Balmiki boys on the morning of 21st April 2010.

67. The trial Court was, therefore, wholly in error in completely dissociating the incident of 19th April 2010 with that which occurred on 21st April 2010. The incident of 19th April 2010 is spoken to by other PWs as well, viz. PWs 37, 38, 42, and 45. It is one thing to say that the said incident is being investigated separately and the culpability for that incident had to be fixed in a separate trial. It is another to say that this incident had nothing to do with what transpired subsequently. The

latter inference was incorrectly drawn by the trial Court and therein lies one of the central flaws in the reasoning of the trial Court.

68. The trial Court also appears to have erred in holding that it is only the quarrel between A-34 and A-25 on the one hand and the Balmiki boys on the other on the morning of 21st April 2010 that led to the subsequent incident in which the houses of the Balmikis were burnt and destroyed and in which Tara Chand and Suman lost their lives. If the three dates are seen in sequence, i.e. 19th, 20th and then 21st April 2010, it is plain that tensions were building up from the first day itself. In fact, the trial Court notices that A-34, who was running a dairy, stopped supplying milk to the Balmikis on 20th April 2010. Clearly, this was on account of the incident of 19th April 2010 wherein the dog of Jai Prakash barked at him and others and subsequently an altercation took place which led to the injuries caused to Karan Singh (DW-13) and Veerbhan.

69. This Court has already adverted to the evidence on record in the form of PWs 37, 38, and 42 who have spoken about the tense atmosphere in the village on 20th April 2010. With A-34 stopping the supply of milk on 20th April 2010, the Balmikis, who were dependent on him for their milk supplies, were naturally upset. Therefore, it would be incorrect to say that it is only the incident which occurred on the morning of 21st April 2010 that led to the subsequent events and that the incident of 19th April 2010 and the prevailing atmosphere of fear on 20th April 2010 were completely unrelated to the rioting that took place on 21st April 2010.

70. As this Court views it, what transpired on the morning of 21st April 2010 is that there was a *panchayat* of Jats held at around 7 am. The Jats went to meet Veerbhan

and asked him to compromise the dispute. Veerbhan is stated to have agreed to do so. That very morning, A-34 was passing through the main *gali* on a *baggi* (cart) as he was returning home from the fields. DWs 7, 16, and 20 (all of whom are Balmikis) have deposed to having seen a group of Balmiki boys attacking A-34 thereafter.

71. The trial Court appears to have lost sight of the medical evidence when scrutinising the testimonies of witnesses in this regard. It is significant that although A-34 claims to have also gone to the General Hospital in Jind where he was examined by Dr. Gandhi (DW-32), there is not a single document in the form of an MLC that reveals when A-34 had, in fact, been there.

72. On the other hand, as noted by the trial Court itself, the CDR of the mobile phone used by A-34 reveals that he first called Dr. Kuldeep (DW-33) at 1:07 pm on 21st April 2010 and it was DW-33 who then referred him to DW-32 who examined him. This examination, therefore, could have taken place only after 1:07 pm and not earlier. This meant that A-34 did not reach the General Hospital at Jind prior to 1 pm. There is nothing in the cross-examination of DW-32 that suggests that A-34 came to the General Hospital in Jind at any time earlier than 1 pm.

73. Turning now to A-36, the trial Court concludes that he was "brutally assaulted by a *jellie*". This was based on the testimonies of DWs 7, 16, and 20. In fact, DW-16 specifically states that A-36 was injured around his eye/temple and a "large chunk of his skin had peeled off". The medical evidence, however, is to the contrary. The MLC of A-36 (Ex.DW-32/A) shows that he was brought to the General Hospital in Jind only at 1:15 pm. There is no noting in the said MLC about

A-36 having suffered any grave injury.

74. What is also significant is A-36 telling the treating doctor that he had sustained those injuries because he "fell down from a *baggi*". It is odd that, if he was in fact attacked by the Balmiki boys, he would not even name them or tell the doctor that he had been attacked or assaulted. In such an event, it is highly unlikely that he would tell the doctor that he had simply fallen down from a *baggi* as it was not in his interests to protect the Balmiki boys in any case.

75. The cross-examination of DW-32, who himself prepared that MLC, did not show that he had wrongly noted anything in the said MLC. DW-32 also does not appear to have written down his observations about any injury on or near the eye of A-36. There is no doubt that, in his cross-examination, he adverts to the fact that A-36 was referred to a surgeon who in turn referred him for ophthalmological examination to PGIMS, Rohtak. The surgeon reported that no surgical attention was required. There is no indication that the eye surgeon at PGIMS, Rohtak indicated any serious damage to the eye. In the Court, DW-32 again examined A-36 and noticed the scar mark of the injuries still present on the "frontal temporal and right cheek near the eye".

76. What was entirely missed by the trial Court was the time when A-36 was brought in for the examination conducted by DW-32. As per the MLC, he was taken to the hospital at around 1.15 pm on 21st April 2010. This being the case, there was no way that A-36 had been attacked at 8 am in the morning. The large time gap between the purported attack on A-36 and when he was subsequently examined by DW-32 has not been attempted to be explained by the defence.

77. Consequently, the medical evidence brought on record by the defence itself did not support its theory that:

(i) A-34 was assaulted by the Balmiki boys at around 8 am on 21st April 2010 as a result of which he had to be immediately taken to the General Hospital in Jind.

(ii) When A-36 tried to intervene to save A-34, he was brutally attacked with *jellies* wielded by the Balmiki boys, as a result of which he suffered an injury near the eye and he too had to be rushed immediately to the General Hospital in Jind.

(iii) It is only after A-34 and A-36 were removed to the General Hospital, Jind that the stone pelting started.

78. The above sequence has not been proved by the evidence brought on record by the defence itself. The fact that A-34 went into the Balmiki *basti* and proceeded to taunt the Balmiki boys or that A-25 ran into the Jat *basti* shouting that A-34 had been assaulted (which the trial Court at various places translates as A-34 having been killed with the words '*mar diya*' being capable of being interpreted as both assaulted or killed) shows that the Jat boys wanted to create further panic and furore by exaggerating what perhaps could have ended up being only a minor scuffle. This need to exaggerate what was essentially a minor scuffle as an assault by the Balmiki boys on the Jat boys, viz. A-34, A-25, and A-36 is itself indicative of the simmering tension which was like gunpowder kept waiting for a spark. This was again completely missed by the trial Court by seeing the incident on the morning of 21st April 2010 as a one-off incident having nothing to do with the events of 19th and 20th April 2010.

79. This Court would also like to consider the incident in which Gulaba (PW-48) was attacked by members of the Jat community as he was returning home having collected *lassi* on the morning of 21st April 2010. The evidence of the PWs does not aid us in determining the specific time when this assault occurred. An overall reading of the various testimonies, however, brings us to the logical construction of events as follows:

(i) There was a *panchayat* of the Jats held at 7 am on 21st April 2010.

(ii) Veerbhan is approached for a compromise soon thereafter by the Jats.

(iii) Meanwhile, there is an altercation between A-34 and A-25 on the one hand and some Balmiki boys on the other regarding the non-supply of milk by A-34.

(iv) A-25, with a view to creating tension and panic and also inciting violence, runs into the Jat *basti* whilst raising an alarm and exaggerating that A-34 had been attacked/killed.

(v) Gulaba (PW-48) picked up some lassi and was returning home in the opposite direction and when he was passing by the house of A-34, he was beaten up by A-34 and some other boys from the Jat community.

80. The trial Court also missed another important aspect, viz. that as Gulaba (PW-48) was returning home, he noticed that Jat women were already carrying oil cans and *peepis* (containers). In other words, preparations had already been made on the side of the Jats for a major assault on the Balmikis. After Gulaba (PW-48) was lifted by persons from his *mohalla* and returned home, the stone pelting started because by that time the Jats had assembled in larger numbers, as noticed by the trial Court itself.

81. Much has been emphasized by the trial Court and also by the learned counsel appearing for the accused before us about how it was the Balmiki community that started throwing stones at the Jats and not the other way around. The trial Court appears to have bought into the defence argument that there was stone pelting on both sides at the start of the violence. It is, however, not in dispute that the Jats clearly outnumbered the Balmikis. What was initially described as a gathering of 100 to 150 Jats had swelled to 400 to 500. With the Balmikis being so clearly outnumbered, any stone pelting or brickbatting which took place on their part was clearly an attempt to ward off the Jats or as retaliation for the attack on them.

82. The trial Court correctly notes that the photographs and videographs on record show the presence of a large number of brickbats and that these were the brickbats brought by the Jats and thrown on the Balmikis. Clearly, the aggressors were the Jats because they came into the Balmiki *basti* and attacked the Balmikis. This basic fact was lost sight of by the trial Court in simply recording the entire incident as one in which both communities pelted stones at each other. It is plain, when the incidents of 19th, 20th, and 21st April 2010 are viewed collectively, as to who the aggressors were and who the victims.

Site plans & photographic and videographic evidence

83. Another important piece of evidence which was completely missed by the trial Court was the site plan of the village, drawn up and exhibited as Ex.PW-54/B. A careful perusal of the site plan, which is not a scaled site plan, shows that it was drawn up over a period of three days by PW-54, a head constable attached to the Haryana police, on the instructions of the IO and after visiting the houses of the victims. This site plan shows that the burning of houses of the Balmikies was

certainly not directed at the houses situated on the main *gali* but on the side of the fields to the south and the houses located on the western side of the village. In other words, the plan hatched by the Jats was to hem the Balmikis in from all directions and ensure that there was no escape.

84. Since they were boxed in from the south, i.e. where the main *gali* led to the fields, there was no way the Balmikis could have run into the fields to save themselves. Since they were hemmed in from the west, they could not have also run towards the temple to save themselves. Instead, with the Balmikis being surrounded by Jat *basti*s on all sides and with the Jats attacking them from the periphery of the Balmiki *basti*, the Balmikis had no option but to run to the main *gali* to save themselves. As noticed by the trial Court, the main *gali* itself was filled up by the Jats who had assembled there and these Jats possibly also included people who had come for the temple festival on a Wednesday. The net result was that the Balmikis were trapped with no way to run and therefore had to face the brunt of the stone pelting, burning of their houses and shops and the looting and destruction of their property.

85. The evidence of PW-54 is of significance. He has explained how he not only drew up the large site plan (unscaled) of the entire village which shows that the houses of Balmikis are surrounded on all sides by the houses of Jats and also shows those houses of the PWs that were burnt or destroyed (there were many more such houses that were burnt/destroyed). However, PW-54 also drew up 33 individual site plans (scaled) which were marked as Ex.PW-54/A-1 to A-33. In other words, there were at least 33 houses of the Balmikis visited by PW-54 and he was able to show in each of the site plans the manner in which the property was

either burnt or the articles therein looted or destroyed.

86. PW-54 was hardly subjected to any cross-examination. The only suggestion to him was that he drew up the site plans whilst sitting in the PS and without having visited the site. He obviously denied this preposterous suggestion. There is no way anyone could have drawn up either the unscaled site plan or the scaled site plan of individual houses without visiting those houses. In fact, there is no suggestion to him at all that anything depicted in the unscaled site plan of the village or in the scaled site plans of the damaged houses was erroneous.

87. This large unscaled site plan also shows clearly the place where the attack on Veerbhan and Karan Singh (DW-13) took place on 19th April 2010 which was near the house of A-34. The site plan also shows the *chaupal* where the Jats had assembled on 21st April 2010. It shows the houses of key PWs, viz. Rajesh (PW-46), Gulaba (PW-48), Dilbagh (PW-43), Satyawan (PW-47), and Sube Singh (PW-39). The house of the deceased Tara Chand is also shown on the said site plan.

88. The reading of the evidence of PW-42 by the trial Court is incorrect. Later in this judgment, this Court proposes to discuss his evidence at some length. He certainly did not admit to the altercation early on 21st April 2010 between A-34 and some Balmiki boys in the main *gali* which purportedly happened due to A-34 stopping the supply of milk to the Balmiki residents of the village. He also did not admit to A-36 receiving injuries when he tried to save A-34. Also, nowhere does Amar Lal (CW-1) speak about A-34 or A-36 being attacked by the Balmiki boys physically. The trial Court has drawn such conclusions on the basis of an erroneous reading of their testimonies.

89. Nothing turned on the fact that the Mata Phoolan Devi Temple was being managed by the members of the Balmiki Community. How this could be interpreted as evidence against them cannot be understood. On the other hand, it may probably explain cause for a further grudge amongst the members of the dominant community. Be that as it may, there is nothing to indicate that the conflagration was a result of any purported attack by Balmiki boys on A-34, A-25 and A-36. It may have been because of the false rumours started in that regard but the fact that a false rumour could lead to violence on such a large scale only further strengthens the argument that this violence perpetrated against the Balmiki community was the result of deeply held prejudices on the part of the dominant community, i.e. the Jats.

90. The disproportionate manner in which the members of the Jat community reacted not only to the incident of 19th April 2010 but even to the supposed altercation between A-34 and the Balmiki boys on the morning of 21st April 2010 is also demonstrative of the deep prejudices harboured by the members of the dominant community against the Balmikis. This is a social reality which has been lost sight of by the trial Court and has led to surmises and conjectures about the incident on the morning of 21st April 2010.

91. Much has been made by the trial Court about the suppression by the police of the incidents of the morning of 21st April 2010 in the charge sheet. As already noticed, there is no clear evidence that has emerged about any physical attack on A-34 or A-36 by the Balmiki boys on the morning of 21st April 2010 at around 8 am. If A-36 had in fact been attacked by the Balmiki boys, there is no way that he would not have informed the doctors treating him about such an incident and

instead have told them that he simply fell down from a *baggi*. Further, if A-34 had actually been attacked, there should have been some MLC produced to show that he suffered some injuries in such an event which would require him to be taken to the General Hospital, Jind.

92. It appears to this Court that the incident which purportedly took place at 8 am on 21st April 2010 was entirely fictional and was in fact used to stoke the fire as is seen by A-25 running towards the Jat *basti* shouting that A-34 had been attacked/killed. It is fairly obvious that this narrative was useful in aggravating the prevailing tensions and ensuring an explosive and wholly disproportionate reaction from the Jat community. Consequently, this Court is unable to subscribe to the sequence of events that has been laid down by the trial Court or its analysis of the same in trying to shift the blame onto the Balmiki boys for attacking the the members of the Jat community on the morning of 21st April 2010 which proved to be the spark that set off the violence that ensued on that date.

93. This has also led the trial Court to wrongly conclude that there was no criminal conspiracy hatched by the Jat community to attack the Balmiki *basti*. In ***Ajay Agarwal v. Union of India*** (*supra*), the Supreme Court observed that it was not necessary that each conspirator must know all the details of the scheme or be a participant at every stage. In ***Abuthagir v. State*** (*supra*), it was explained as under:

> "In the case of conspiracy there cannot be any direct evidence. The ingredients of the offence are that there should be an agreement between persons who are alleged to conspire and the said agreement should be for doing an illegal act or for doing by illegal means an act which itself may not be illegal. Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both, and it is a matter of common experience that direct

> evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused."

94. In ***K.R. Purushothaman v. State of Kerala*** (*supra*), it was further highlighted as under:

> "To constitute a conspiracy, meeting of minds of two or more persons for doing an illegal act or an act by illegal means is the first and primary condition and it is not necessary that all the conspirators must know each and every details of conspiracy. Neither it is necessary that every one of the conspirators takes active part in the commission of each and every conspiratorial act. The agreement amongst the conspirators can be inferred by necessary implications. In most of the cases, the conspiracies are proved by the circumstantial evidence; as the conspiracy is seldom an open affair. The existence of conspiracy and its objects are usually deducted from the circumstance of the case and the conduct of the accused involved in the conspiracy."

95. In separating out the incidents that took place on 19th and 21st April 2010, and by ignoring the prevailing tensions in the village on 20th April 2010, the trial Court failed to take into account the "circumstances proved before, during and after the occurrence". In light of this oversight and the judicial position explained hereinabove, this Court cannot concur with the finding that no conspiracy was entered into by members of the Jat community to carry out a coordinated attack on the Balmiki community of the village.

96. It must also be mentioned that the non-recovery of *jellies*, *gandasis*, etc. was not particularly unusual seeing as these are ordinary agricultural implements used by farmers and would have been readily available in the houses of the Jat community, which is the major farming community in the village. In fact, the Balmiki community being predominantly employed as labour on the fields of the

Jat farmers, it is unlikely that they themselves possessed such implements. Be that as it may, it is not as if it would have been difficult for the Jat community to simply carry these implements back to their houses after the attack.

97. The nature of the attack was also such that what was essentially done was to burn or destroy the houses of the Balmikis and loot their properties. The presence of numerous brickbats at the site of the rioting demonstrated that a full-fledged attack was carried out on the Balmiki community. In this regard, the testimonies of PWs 3 and 4, i.e. the photographer and the videographer respectively, assume significance and this has not at all been discussed by the trial Court. PW-3 was the photographer who took as many as 109 digital photographs of the scene of the rioting. They are marked as Ex.PW-3/A-1 to A-109. A question put to PW-3 about trying to identify the houses in each photograph was disallowed by the trial Court by correctly observing that "the witness can only prove the taking of the photographs at the spot but not the identity of the owners or the occupants not having participated in the investigation".

98. This is where the evidence of PW-54 assumes significance. He himself visited each of these houses that were burnt or destroyed and drew up their scaled site plans. However, he was not confronted with the photographs to show that they were not of the very houses of which the site plans he had drawn up. It is not difficult to correlate the photographs with the houses for which site plans were drawn up. For instance, the burning of the rickshaw used by Suman is proved on a photograph (Ex.PW-3/A-9) taken inside the house of Tara Chand which clearly demonstrates that the mob had entered that particular house and burnt the properties there.

99. Likewise, there are numerous photographs that show the properties inside the houses as having been destroyed or burnt, charred walls and damaged articles/goods. These photographs were taken either on 21st April 2010 itself or soon thereafter. There has been no attempt to show that any of these photographs were fabricated or false. They are not shown to be of houses other than those of the Balmikis. A heavy burden lay on the defence to show that these were not the photographs of the Dalit houses that were burnt or destroyed. There is no attempt made in this regard at all. These photographs were therefore an important corroborating piece of evidence for the prosecution's version of events that took place on 21st April 2010.

100. Then we have the video footage taken by PW-4 who was also not cross-examined very thoroughly. The footage was taken on 22nd April 2010, i.e. the day after the incident. The video clearly shows the extent of the damage done to the properties of the Dalits.

101. This Court is unable to understand the conclusions drawn by the trial Court with regard to the selective targeting of the houses of the Balmikis. From the layout of the village, it is apparent that the Balmiki *basti* was located in the corner of the village abutting the fields which lay to the south of the village. On all other sides, the Balmiki *basti* was surrounded by the dwellings of the Jat community. They were, therefore, soft targets. There was no difficulty at all for the Jats to identify the Balmiki houses and attack them. In that sense, it could be said that the houses were attacked selectively.

102. Once within the Balmiki *basti*, the Jat mob was indiscriminate in the havoc it

sought to wreak. The damage and destruction that is evidenced from the record is widespread and, in the opinion of this Court, could not have been carried out by a small group of Jat youth in an altercation between two groups as is speculated by the trial Court. There is no doubt that it was indeed a mob which made a coordinated and premeditated attack on the Balmiki community. A conjoint analysis of the site plans, the photographs, and the video footage provides a startling picture of the horrors faced by the Balmiki community on 21st April 2010.

103. The conclusion of the trial Court that there was no criminal conspiracy is unsustainable in law. The trial Court failed to examine the photographs, videograph, and site plans in its analysis of the events of 21st April 2010 and erred in accepting the alternative version of the incident on 21st April 2010 as put forth by the defence. This part of the finding of the trial Court, therefore, deserves to be set aside by this Court. This part of the finding of the trial Court, therefore, deserves to be set aside by this Court.

Unlawful assembly with a common object

104. The trial Court has concluded that since the burning of houses belonging to the Balmiki community was selective, it could not be said that an unlawful assembly had formed with the common object of destroying the properties of the Balmiki community as a whole. This Court would first like to highlight that the Supreme Court, in ***Pandurang Chandrakant Mhatre v. State of Maharashtra*** (*supra*), identified two essential ingredients of the offence under Section 149 IPC as:

(i) Commission of an offence by any members of an unlawful assembly; and

(ii) Such offence must been committed in prosecution of the common object of

that assembly or must be such as the members of that assembly knew it to be likely to be committed.

105. The offence under Section 149 IPC was further characterised by the Supreme Court in ***Md. Ankoos v. Public Prosecutor, High Court of A.P.*** (*supra*) in the following manner:

> "....Section 149 IPC creates constructive liability i.e. a person who is a member of the unlawful assembly is made guilty of the offence committed by another member of the same assembly in the circumstances mentioned in the Section, **although he may have had no intention to commit that offence and had done no overt act except his presence in the assembly and sharing the common object of that assembly.** The legal position is also fairly well settled that because of a mere defect in language or in the narration or in form of the charge, the conviction would not be rendered bad if accused has not been affected thereby." (emphasis supplied)

106. It is also relevant, in the present case, to consider the difference between the concepts of 'common object' and 'common intention'. The nuanced difference between these two concepts has been brought to light in ***Rabindra Mahto v. State of Jharkhand*** (*supra*) as under:

> "Under Section 149 IPC, if the accused is a member of an unlawful assembly, the common object of which is to commit a certain crime, and such a crime is committed by one or more of the members of that assembly, every person who happens to be a member of that assembly would be liable for the commission of the crime being a member of it irrespective of the fact whether he has actually committed the criminal act or not. **There is a distinction between the common object and common intention. The common object need not require prior concert and a common meeting of minds before the attack, and an unlawful object can develop after the assembly gathered before the commission of the crime at the spot itself.** There need not be prior meeting of the mind. It would be enough that the members of the assembly which constitutes five or more persons have common object

> and that they acted as an assembly to achieve that object. In substance, Section 149 makes every member of the common unlawful assembly responsible as a member for the act of each and all merely because he is a member of the unlawful assembly with common object to be achieved by such an unlawful assembly. At the same time, one has to keep in mind that mere presence in the unlawful assembly cannot render a person liable unless there was a common object and that is shared by that person. The common object has to be found and can be gathered from the facts and circumstances of each case." (emphasis supplied)

107. In ***State of U.P. v. Dan Singh*** (*supra*), the Supreme Court made reference to the decision in ***Lalji v. State of U.P. (1989) 1 SCC 437*** wherein it was observed that the "common object of the unlawful assembly can be gathered from the nature of the assembly, arms used by them and the behaviour of the assembly at or before scene of the occurrence. It is an inference to be deduced from the facts and circumstances of each case". The Supreme Court went on to observe:

> "What has to be seen is whether the basic features of the occurrences have been similarly viewed and/or described by the witnesses in a manner which tallies with the outcome of the riot, viz., the injuries sustained by the victims and the number of people who are attacked and killed. Before we deal with the testimony of these witnesses, it will be important to bear in mind that in the present case the conviction is being sought under Section 302 I.P.C. with the aid of Section 149 I.P.C. The two essential ingredients of this Section are that there must be a commission of an offence by any member of unlawful assembly and that such offence must be committed in prosecution of common object of that assembly or must be such as the members of that assembly knew to be likely to be committed. It is also a well-settled law (see *Masalti vs State of Uttar Pradesh, AIR 1965 SC 202*) that it is not necessary for the prosecution to prove which of the members of the unlawful assembly did which or what act. In fact as observed in *Lalji's* case (supra) "while overt act and active participation may indicate common intention of the person perpetrating the crime, the mere presence in the unlawful assembly

may fasten vicariously criminal liability under Section 149"."

108. The following observations of the Supreme Court in this regard in its decision in ***Masalti v. State of U.P.*** (*supra*) are instructive:

> "Then it is urged that the evidence given by the witnesses conforms to the same uniform pattern and since no specific part is assigned to all the assailants, that evidence should not have been accepted. This criticism again is not well founded. Where a crowd of assailants who are members of an unlawful assembly proceeds to commit an offence of murder in pursuance of the common object of the unlawful assembly, it is often not possible for witnesses to describe accurately the part played by each one of the assailants. Besides, if a large crowd of persons armed with weapons assaults the intended victims, it may not be necessary that all of them have to take part in the actual assault. In the present case, for instance, several weapons were carried by different members of the unlawful assembly, but it appears that the guns were used and that was enough to kill 5 persons. In such a case, it would be unreasonable to contend that because the other weapons carried by the members of the unlawful assembly were not used, the story in regard to the said weapons itself should be rejected. Appreciation of evidence in such a complex case is no doubt a difficult task; but Criminal Courts have to do their best in dealing with such cases and it is their duty to sift the evidence carefully and decide which part of it is true and which is not."

109. It is clear in the present case that an unlawful assembly comprising members of the Jat community was formed with the common object of setting fire to the properties of the Balmiki community and perpetrating violence against them, as it stands established that the members of said unlawful assembly came armed with stones and oil cans as well as *lathis*, *jellies* and *gandasis*which, in the present context, may be considered deadly weapons. The common object of the unlawful assembly was to 'teach the Balmiki community a lesson'. The manner in which the offences were carried out clearly indicates that the mob sought to intimidate the

Balmiki community and subjected them to physical and mental violence as spoken to by several PWs. Section 149 IPC is, therefore, clearly attracted.

110. The causal link between the incidents of 19th and 21st April 2010 has already been discussed and in that context, it is apparent that the mob came armed with the intention of exacting revenge on the Balmiki community. Many witnesses have spoken of an atmosphere of fear having gripped the village and of groups of boys from the Jat community roaming around the village, issuing threats to members of the Balmiki community. Thus, the Court is satisfied that the common object in the present case was to teach the members of the Balmiki community a lesson and this has been fully achieved by the accused persons. Therefore, this Court concludes that Section 149 IPC stands attracted in the present case.

Applicability of the POA Act

111. The accused persons in the present case were also charged with having committed offences punishable under the POA Act. The said legislation has been enacted with the purpose of protecting members of the Scheduled Caste and Scheduled Tribe communities from caste-based atrocities perpetrated against them. Article 341 of the Constitution of India empowers the President to specify, with respect to any State, after consultation with the Governor of that State, by public notification, the castes, races, or tribes which shall be deemed to be Scheduled Castes in relation to that State. In pursuance of this power, the Constitution (Scheduled Castes) Order, 1950 was promulgated which specified in its Schedule the deemed Scheduled Castes with respect to each State. Section 3 of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 introduced an altogether new Schedule to replace the earlier one wherein the

Scheduled Castes in the State of Haryana were also listed in Part V. The Balmiki caste is listed under Entry No.2 of Part V as a Scheduled Caste. Therefore, it is beyond contention that offences committed against members of the Balmiki community would attract the provisions of the POA Act.

112. The charges under the POA Act in the present case were under clauses (x) and (xv) of Section 3(1) POA Act and clauses (iii), (iv), and (v) of Section 3(2) POA Act. The relevant clauses, as they stood at the time of the incident and prior to amendment, read as under:

> "3. (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,--
>
> xxxxx
>
> (x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;
>
> xxxxx
>
> (xv) forces or causes a member of a Scheduled Caste or a Scheduled Tribe to leave his house, village or other place of resident,
>
> shall be punishable with imprionsment for a term which shall not be less than six months but which may extend to five years and with fine.
>
> (2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,--
>
> xxxxx
>
> (iii) commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause damage to any property belonging to a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;
>
> (iv) commits mischief by fire or any explosive substance

intending to cause or knowing it to be likely that he will thereby cause destruction of any building which is ordinarily used as a place of worship or as a place for human dwelling or as a place for custody of the property by a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for life and with fine;

(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine;

xxxxx"

Section 3(1)(x) POA Act

113. The Court proposes to first examine Section 3(1)(x) POA Act which talks of the offence of intentionally insulting or intimidating "with an intent to humiliate" a member of the SC at "any place within public view". In the present case, a large number of phrases and words uttered by members of the Jat community at the time of the attack on the members of the Balmiki community have been referred to by PWs in their depositions in the Court. For some reason, however, in their earlier statements under Section 161 Cr PC, none of the witnesses referred to any insulting words spoken by any of the members of the Jat community. The trial Court has, therefore, disbelieved the PWs to this extent and viewed this as an improvement over the previous statements given in the Court.

114. In the present case, there are two kinds of insults with the intention to humiliate that have been adverted to by the prosecution – one is the use of objectionable words to describe the members of the Balmiki community and the

other is the act of dancing naked in front of the houses of the Balmiki community that were being burnt. While the act of speaking insulting words was not adverted to by any of the PWs in their initial statements to the police, as far as the act of dancing naked is concerned, only nine witnesses appear to have adverted to it and that too not against all the accused. While Sushil (PW-25) has named A-20 and A-13, PW-30 has named only A-28. Vicky (PW-42) has named A-27. Amar Lal (CW-1) also speaks of this but does not name anyone in particular. The other five witnesses, i.e. PWs 28, 40, 43, 47, and 50, have not named any accused in particular as having danced naked. Therefore, the evidence available on the record is not sufficient to find any of the accused persons guilty of the offence under Section 3(1)(x) POA Act.

Section 3(1)(xv) POA Act

115. The offence under Section 3(1)(xv) POA Act is one committed by a person, not being one who belongs to a Scheduled Caste, who forces or causes a member of a Scheduled Caste to leave his house, village, or other place of residence. There is abundant evidence to show that at least 254 Balmiki families ended up leaving village Mirchpur and sought shelter in the farmhouse of one Ved Pal Tanwar. This was clearly due to the attack which they had suffered at the hands of the Jat community mob which had burnt their houses and killed the two deceased. Even the arrival of police reinforcements was not enough to placate their fears and given the conduct of the Jat community and inaction of the police officials, the members of the Balmiki community of village Mirchpur had little choice but to flee the village. Numerous witnesses have spoken of this. The trial Court itself has noted how, even while deposing before the trial Court, many of these witnesses came from Ved Pal Tanwar's farmhouse where they were residing at the time.

116. Consequently, the Court has no hesitation in holding that the offence under Section 3(1)(xv) POA Act is made out *qua* some of the accused in the present case to whom notices have been issued as it is their collective act of violence that has compelled at least 254 families of the Balmiki community to leave Mirchpur. As will be noticed hereafter, many of those families continue to remain at Ved Pal Tanwar's farmhouse awaiting rehabilitation and reparation. They have been too scared to return to Mirchpur. Thus, the offence under Section 3(1)(xv) POA Act stands established beyond reasonable doubt and the trial Court's finding to the contrary is plainly erroneous.

Section 3(2)(iii) and (iv) POA Act

117. To begin with, the Court wishes to draw a distinction between Section 3(2)(iii) and (iv) POA Act. While Section 3(2)(iii) deals with the offence of committing mischief by fire or any explosive substance with both the intention and knowledge that such act would cause damage to any property belonging to a member of a Scheduled Caste, Section 3(2)(iv) adds a further aspect to the said offence by requiring the accused persons to both intend and know that, by that act, destruction would be caused of any building used as a place of worship or for dwelling or for the custody of the property of a Scheduled Caste.

118. The distinction in the sentences for the two offences is stark. For the offence under Section 3(2)(iii), the minimum sentence is six months but the maximum is seven years whereas for Section 3(2)(iv) there is only one sentence provided, i.e. imprisonment for life together with fine. Consequently, the word 'destruction' occurring in Section 3(2)(iv) has to be given a strict construction and, in the considered view of this Court, should be interpreted to mean that the entire

building would have to be destroyed making it uninhabitable after being set on fire. Whether in fact the building has been, on account of the fire, been so completely destroyed so as to render it uninhabitable, will obviously be a matter for evidence. Anything short of complete destruction by fire would be covered under Section 3(2)(iii).

119. In the present case, the photographic and videographic evidence available on the record show that in many of the houses of the members of the Balmiki community that witnessed arson, there are charred remains of the belongings and movable effects. Furthermore, the site plan (Ex. PW-54/B) showing the layout of the Balmiki *basti*, which has been found to be correct by the trial Court, together with the individual scaled site plans (Ex. PW-54/A1 to A33), shows that as many as 33 houses were burnt or damaged. However, it is noticed that not all the houses which were burnt have been completely destroyed. The photographs show that the houses of the deceased Tara Chand, his wife Kamala (PW-50) and Dhoop Singh (PW-29) were completely destroyed so as to render them uninhabitable. Consequently, as far as the burning of those houses is concerned, the offence under Section 3(2)(iv) stands attracted and as regards the burning of and damage caused to the other Balmiki houses, the offence under Section 3(2)(iii) is made out.

Section 3(2)(v) POA Act

120. As regards the charge under Section 3(2)(v), the defence has sought to challenge the applicability of the provision on the ground that the prosecution has failed to establish that the offences committed against victims belonging to the Balmiki community were perpetrated against them specifically due to their being Balmiki. It is pointed out that the charge under Section 3(2)(v), as it stood prior to

its amendment with effect from 26th January 2016, could be brought home only when it was shown that the offence has been committed "on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member". Reliance is placed on the decision in ***Asharfi v. State of U.P. (2018) 1 SCC 742*** to aver that unless the essential conditions for the applicability of the POA Act are met, any conviction thereunder would suffer illegality and would have to be set aside.

121. It is pertinent to note that by Act No.1 of 2016 which came into force on 26th January 2016, Section 3(2)(v) stands amended to the effect that mere knowledge on the part of the perpetrator that the victim belongs to a Scheduled Caste or a Scheduled Tribe would be sufficient to attract the charge thereunder. However, the present case is governed by the provision as it stood prior to the amendment given that it occurred in the year 2010. Therefore, the burden is on the prosecution in the present case to prove that the offences against the members of the Balmiki community were perpetrated on the ground that they belonged to the Balmiki caste.

122. It is submitted on behalf of the defence that in the present case, the prosecution has not established that the accused persons sought to commit crimes specifically directed against members of the Balmiki community. Reference was made to the decisions in ***State of A.P. v. Viswanadula Chetti Babu (2010) 15 SCC 103***; ***Dinesh @ Buddha v. State of Rajasthan (2006) 3 SCC 771***; and ***Masumsha Hasanasha Musalman v. State of Maharashtra (2000) 3 SCC 557***.

123. The Court finds no merit in the above submissions. The cross-examination of the PWs has brought out the fact that the victims belonged to the Balmiki

community. This was not under challenge at any stage during the trial. Furthermore, the depositions of the various PWs show that there was no doubt in the minds of the perpetrators that the victims were members of a Scheduled Caste community. In fact, it is evident that they had arrived at the Balmiki *basti* armed with various deadly weapons with the intention of teaching the members of the Balmiki community a lesson in retaliation for the incident which occurred on 19th April 2010. The conduct of the accused persons clearly indicates that their attack on the Balmiki community was perpetrated on the ground that such the victims were members of a Scheduled Caste.

124. Furthermore, as has been rightly pointed out by the learned counsel for the complainants, this issue about the POA Act not being applicable was never raised at any stage before the trial Court. Not only was the FIR in this case registered for offences punishable under the POA Act read with provisions of the IPC, the charge sheet itself contained references to the POA Act. The trial has been conducted in a Special Court designated to hear cases under the POA Act. In fact, the trial was transferred to the Special Court on the directions of the Supreme Court as noted hereinbefore. The charges framed against the accused included those under the POA Act and this was again not challenged by any of the accused.

125. It was clear throughout the trial that while the accused persons belonged to the Jat community, the victims belonged to the Balmiki community. This was never in doubt. It was also never in doubt that the Balmikis are notified as a Scheduled Caste in the State of Haryana. The defence themselves have spoken to the fact that the victims received compensation under the POA Act. Consequently, the Court rejects the plea of the defence questioning the applicability of Section

3(2)(v) POA Act for the first time in this Court.

126. In the judgment of the trial Court, there appears to be some confusion in this regard. While the trial Court has convicted A-20, A-34, and A-38 under Section 3(2)(v) POA Act, it has not done so *qua* the other accused persons based on its reasoning that what was perpetrated against the victims from the Balmiki community was not, in fact, an offence motivated by caste hatred. This Court is unable to subscribe to such reasoning. It is evident from the material on the record that the members of the Jat community had hatched a conspiracy to attack the Balmiki community and deliberately targeted them by going to their *basti*. It cannot be claimed that the accused persons did not know who they were attacking.

127. As has already been observed, this was an act of revenge perpetrated by the Jat community in retaliation to the perceived insult dealt to them by members of the Balmiki community on 19th April 2010. It also stands established that rioting on 21st April 2010 was sparked when A-25 ran through the main *gali* of the village at 8 am whilst raising a false alarm that he and A-34 had been attacked by the boys from the Balmiki community. Even accepting that the Jats began attacking at around 9 to 9:30 am, there was enough time for preparation by the Jat community mob to plan an attack on the Balmiki *basti*. Such planning is evidenced by the fact that they had brought oil cans as deposed by Gulaba (PW-48) and *rehris* full of stones. The male members of the Jat community met in the Jat *chaupal* and, upon being instigated by A-37 (the SHO of PS Narnaund), surrounded and attacked the Balmiki *basti* and the women and children there who had been left alone with the males having assembled at the Balmiki *chaupal* on being instructed to do so by A-37.

128. Notice has not been issued to A-37 (acquitted) in the present appeals and therefore, it is not necessary to examine his role in any great detail. It would suffice to say that there is abundant evidence to show that the Jat community were the aggressors and were not merely reacting to provocation by the Balmiki community as has been opined by the trial Court. The fact that members of the Balmiki community were themselves throwing stones cannot be seen as anything other than them acting in self-defence against an organised and well-planned attack by the accused persons.

129. It was not one or two houses but several which were burnt. Therefore, the attempt to characterise the incident as a mere dispute between certain individuals and not an instance of caste-based violence is futile. The intent was clearly to intimidate and subjugate the members of the Balmiki community so as to teach them a lesson for the incident of 19th April 2010. The houses of the Balmiki community were deliberately targeted. The Jat mob was successful in setting fire to multiple houses and belongings of the Balmiki community.

Section 8 POA Act

130. It was submitted by Mr. M.N. Dudeja, learned counsel for some of the accused, that there can be only one set of rules and standards of proof of crime when it comes to trials in criminal cases unless the statute provides for anything specifically applicable to a particular case or class of cases. In this regard, reliance was placed on the decision in ***Kailash Gour v. State of Assam (2012) 2 SCC 34***.

131. In this context, it would be pertinent to refer to Section 8 POA Act which, at the relevant time, read as under:

"8. Presumption as to offences:– In prosecution for an offence under this Chapter, if it is proved that –

(a) the accused rendered any financial assistance to a person accused of or reasonably suspected of, committing, an offence under this Chapter, the Special Court shall presume, unless the contrary is proved, that such person had abetted the offence;

(b) a group of persons committed an offence under this Chapter and if it is proved that the offence committed was a sequel to any existing dispute regarding land or any other matter, it shall be presumed that the offence was committed in furtherance of the common intention or in prosecution of the common object."

132. Section 8(b) is of particular relevance in the present case since it makes specific reference to a group of persons committing an offence as a sequel to an existing dispute regarding land "or any other matter". In such a scenario, it is stipulated that the presumption is drawn as regards the common intention and prosecution of the common object. In the context of the incident of 19th April 2010 and the incident that occurred on the morning of 21st April 2010, the presumption under Section 8(b) stands attracted. In that view of the matter, the decision in ***Kailash Gour v. State of Assam*** (*supra*) is of no assistance to the accused in the present case.

This Court's findings with respect to the POA Act

133. To summarise, this Court finds that the following aspects of the incident of 21st April 2010 have been established:

(i) There was a deliberate targeting of the houses of the members of the Balmiki community by members of the Jat community;

(ii) That this was an instance of caste-based violence meant to teach the Balmiki community a lesson for the perceived insults to the Jat community on 19th and 21st April 2010;

(iii) That the members of the Jat community had planned their attack in advance and had come to the Balmiki *basti* armed with oil cans, *jellies*, *gandasis*, lathis, and *rehris* filled with stones;

(iv) That the properties of the Balmiki community were burnt and looted and their belongings destroyed as is evidenced by the photographs and the videograph on the record.

134. The Court is, therefore, of the view that the finding of the trial Court that this was not an instance of violence driven by caste hatred is unsustainable and is hereby set aside. This Court is satisfied that the prosecution has been able to establish beyond reasonable doubt that the offences punishable under Section 3(1)(xv) POA Act and Sections 3(2)(iii), (iv), and (v) POA Act stand attracted *qua* some of the accused persons. The Court also rejects the plea that the prosecution has not established that the victims of the violence were members of the Balmiki community as this fact has never been questioned.

Leading questions

135. Contentions have been raised regarding the 'leading questions' put to many witnesses by the learned SPP in the trial Court. In this regard, the legal position as set out in ***Sat Paul v. Delhi Administration*** (*supra*) may be recapitulated as under:

> "41……another equally important object of cross-examination is to elicit admissions of facts which would help build the case of the cross-examiner. When a party with the leave of the court, confronts his witness with his previous inconsistent statement, he does so in the hope that the witness might revert to what he had stated previously. If the departure from the prior statement is not deliberate but is due to faulty memory or a like cause, there is every possibility of the witness veering round to his former statement. Thus, showing faultiness of the memory in the case of such a witness would be another object of

cross-examining and contradicting him by a party calling the witness. In short, the rule prohibiting a party to put questions in the manner of cross-examination or in a leading form to his own witness is relaxed not because the witness has already forfeited all right to credit but because from his antipathetic attitude or otherwise, the court feels that for doing justice, his evidence will be more fully given, the truth more effectively extricated and his credit more adequately tested by questions put in a more pointed, penetrating and searching way."

51. From the above conspectus, it emerges clear that even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the court, by the party calling him, his evidence cannot, as a matter of law, be treated as Washed off the record altogether. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as matter of prudence, discard his evidence in toto."

136. The position was further clarified by the Supreme Court in ***Varkey Joseph v. State of Kerala*** (*supra*) thusly:

"11. Leading question to be one which indicates to the witnesses the real or supposed fact which the prosecutor (plaintiff) expects and desires to have confirmed by the answer. Leading question may be used to prepare him to give the answers to the questions about to be put to him for the purpose of identification or to lead him to the main evidence or fact in dispute. The attention of the witness cannot be directed in Chief examination to the subject of the enquiry/trial. The Court may permit leading question to draw the attention of the witness which cannot otherwise by called to the matter under enquiry, trial or

investigation. The discretion of the court must only be controlled towards that end but a question which suggest to the witness, the answer the prosecutor expects must not be allowed unless the witness, with the permission of the court, is declared hostile and cross-examination is directed thereafter in that behalf. Therefore, as soon as the witness has been conducted to the material portion of his examination, it is generally the duty of the prosecutor to ask the witness to state the facts or to give his own account of the matter making him to speak as to what he had seen. The prosecutor will not be allowed to frame his questions in such a manner that the witness by answering merely "yes" or "no" will give the evidence which the prosecutor wishes to elicit. The witness must account for what he himself had seen. Sections 145 and 154 of the Evidence Act are intended to provide for cases to contradict the previous statement of the witnesses called by the prosecution. Sections 143 and 154 provide the right to cross-examination of the witnesses by the adverse party even by leading questions to contradict answers given by the witnesses or to test the veracity or to drag the truth of the statement made by him..."

137. When examined in light of the above decisions, in the present case, this Court finds that the questions put by the learned SPP to the PWs were not actually in the nature of leading questions. Rather, these questions were put to the witnesses in order to refresh their memory. This Court finds that these questions were not close-ended and did not impact the credibility of the witnesses' testimonies. Therefore, the defence's contention in this regard does not resonate with this Court.

Eye witness testimonies

138. Although the prosecution had cited 95 public witnesses to the incident of rioting on 21st April 2010, only 43 ended up being examined as PWs. Only 22 of these 43 PWs supported the case of the prosecution while the remaining witnesses were declared hostile. Amar Lal (CW-1), the son of deceased Tara Chand, also supported the case of the prosecution.

139. In its findings *qua* the reliability of these 23 witnesses, the trial Court has categorised them into three classes: reliable, partly reliable, and unreliable. Sushil (PW-25) and Dhoop Singh (PW-29) have been termed to be reliable witnesses. Rajbir (PW-10), Sunita (PW-13), Santra (PW-30), Sheela (PW-32), Rani (PW-33), Sanjay (PW-36), Meena Kumar (PW-37), and Kamala (PW-50), on the other hand, were found to be unreliable witnesses. The testimonies of Sandeep (PW-28), Mahajan (PW-38), Sube Singh (PW-39), Vijender (PW-40), Vicky (PW-42), Dilbagh (PW-43), Sanjay (PW-44), Manoj (PW-45), Rajesh (PW-46), Satyawan (PW-47), Gulaba (PW-48), Pradeep (PW-49), and Amar Lal (CW-1) have all been deemed to be only partly reliable.

140. It is pertinent to note at the outset that the trial Court has also noticed that those PWs who were residing at the farmhouse of Mr. Tanwar in the aftermath of the incident supported the case of the prosecution and have even to some extent identified the accused in the Court. On the other hand, the PWs who continued to reside or returned to reside in the village after the incident did not support the prosecution case. The trial Court has observed that the reasons for this "may be manifold, not excluding the possibility of their being won over".

141. The trial Court orders of 23rd March, 29th March, 30th March, and 8th April 2011 reveal that even at that stage, it was felt that the accused persons were trying to influence the PWs belonging to the Balmiki community. In fact, Karan Singh (DW-13), who was the complainant in the incident dated 19th April 2010 and who would have been a valuable witness for the prosecution, ended up being examined as a witness for the defence. Furthermore, the other complainant who was severely injured in the aforesaid incident, viz. Veerbhan, never reached the trial Court and

instead returned to village Mirchpur without deposing in the trial.

142. Coming to the testimonies of the PWs, many of them have spoken to the various aspects of the offences committed by the unlawful assembly comprising the accused persons. These witnesses have collectively identified all of the accused persons and have even spoken, in some instances, of the specific acts perpetrated by certain accused persons. However, the trial Court has rejected the ocular testimony of these witnesses for a number of reasons. This Court, having considered the findings of the trial Court *qua* the eye witnesses, is unable to concur. Many of these reasons for rejection of the ocular testimony are contrary to law and find no basis in the evidence on the record.

143. It should be recalled that many of the PWs in the present case were most likely deposing in a trial for the first time and, as noted by the trial Court, were no doubt "overawed and intimidated" by the piercing cross-examinations to which they were subjected. Furthemore, their depositions were being recorded after a considerable passage of time and, thus, there were bound to be discrepancies not only as to the time of occurrence but even as regards other minor details. In this regard, it would be wise to keep in mind the observations of the Supreme Court in ***Ramesh v. State of U.P.*** (*supra*) that "minor contradictions, inconsistencies, exaggerations and embellishments in the testimonies of the eye witnesses were bound to be there. However, they by themselves do not decide the credibility of the witness". This Court is, therefore, of the view that the testimonies of witnesses which are otherwise sound and reliable cannot be discarded for the reason that minor discrepancies or inconsistencies crop up.

144. Coming to the question of determining membership of said unlawful

assembly and the guilt *qua* each of the accused persons, the trial Court has rejected the dock identification of accused persons made by various PWs. This was done on the basis that such dock identifications by the witnesses who have failed to mention the names of the accused persons in their statements to the police under Section 161 Cr PC were clear improvements and therefore unreliable and untrustworthy. The trial Court, however, seems to have ignored the fact that many witnesses have stated that the police had refused to record the names of the accused persons identified by them.

145. It is unfair to characterise all these witnesses as untrustworthy when in fact it took a great deal of courage on their part to appear in the trial and speak up against the offences committed by the dominant caste. This Court is of the opinion that the inconsistencies and omissions highlighted by the trial Court in rejecting the testimony of multiple PWs did not go to the heart of the matter in the present case. The core essence of the testimony of these witnesses remained unshaken in their cross examination and and they were, therefore, reliable. In this context, the Court would like to refer to the settled legal position as explained by the Supreme in ***Alamgir Sani v. State of Assam*** (*supra*):

> "Otherwise creditworthy and reliable evidence of a witness would not be rejected merely because a particular statement made by the witness before the Court does not find place in statement recorded under S.161 Cr PC."

146. In the opinion of this Court, an omission to mention certain aspects of the incident which find mention in their statements to the police recorded under Section 161 Cr PC would only be a material contradiction if it completely invalidates what was earlier stated to the police under Section 161 Cr PC. In ***Kazeman v. State of West Bengal*** (*supra*), it was opined:

> "Only that omission is a contradiction which is inconsistent with what was stated during the examination under S.161, CrPC. If what was not stated during the examination under S.161 CrPC can co-exist with what was stated, it cannot be said that such omission would amount to contradiction"

147. In its decision in ***C. Muniappan v. State of Tamil Nadu*** (*supra*), the Supreme Court observed:

> "71. It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses. (vide *Sohrab and Anr. v. The State of M.P. AIR 1972 SC 2020*; *State of U.P. v. M.K. Anthony AIR 1985 SC 48*; *Bharwada Bhogini Bhai Hirji Bhai v. State of Gujarat AIR 1983 SC 753*; *State of Rajasthan v. Om Prakash AIR 2007 SC 2257*; *Prithu @ Prithi Chand and Anr. v. State of Himachal Pradesh* (2009) 11 SCC 588; *State of U.P. v. Santosh Kumar and Ors.* (2009) 9 SCC 626; and *State v. Saravanan and Anr.*)."

Test Identification Parade

148. The non-conduct of a TIP has also contributed to the trial Court's finding that the dock identification of accused persons for the first time in Court could not be relied upon to arrive at a finding of guilt *qua* an accused person. In this regard, it would be pertinent to highlight the view taken by the Supreme Court in ***Santokh Singh v. Izhar Hussain*** (*supra*) that identification at a TIP "is not substantive evidence and it can only be used as a corroborative of the statement in court".

Similarly, in ***Sidhartha Vashisht @ Manu Sharma v. State (NCT of Delhi)*** (*supra*), the Supreme Court held that "even where there is no previous TIP, the Court may appreciate the dock identification as being above-board and more than conclusive" before noting that "it is dock identification which is a substantive piece of evidence" while the TIP is only an aid to the investigation.

149. In ***Mulla v. State of U.P.*** (*supra*), the Supreme Court explained as under:

> "The evidence of test identification is admissible under Section 9 of the Indian Evidence Act. The Identification parade belongs to the stage of investigation by the police. The question whether a witness has or has not identified the accused during the investigation is not one which is in itself relevant at the trial. The actual evidence regarding identification is that which is given by witnesses in Court. There is no provision in the Cr. P.C. entitling the accused to demand that an identification parade should be held at or before the inquiry of the trial. The fact that a particular witness has been able to identify the accused at an identification parade is only a circumstance corroborative of the identification in Court. Failure to hold test identification parade does not make the evidence of identification in court inadmissible, rather the same is very much admissible in law. Where identification of an accused by a witness is made for the first time in Court, it should not form the basis of conviction. The necessity for holding an identification parade can arise only when the accused persons are not previously known to the witnesses. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime. The identification proceedings are in the nature of tests and significantly, therefore, there is no provision for it in the Code and the Indian Evidence Act, 1872. It is desirable that a test identification parade should be conducted as soon

as possible after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses prior to the test identification parade. This is a very common plea of the accused and, therefore, the prosecution has to be cautious to ensure that there is no scope for making such allegation. If, however, circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution. The identification parades are not primarily meant for the Court. They are meant for investigation purposes. The object of conducting a test identification parade is two-fold. First is to enable the witnesses to satisfy themselves that the accused whom they suspect is really the one who was seen by them in connection with the commission of the crime. Second is to satisfy the investigating authorities that the suspect is the real person whom the witnesses had seen in connection with the said occurrence. Therefore, the following principles regarding identification parade emerge: (1) an identification parade ideally must be conducted as soon as possible to avoid any mistake on the part of witnesses; (2) this condition can be revoked if proper explanation justifying the delay is provided; and, (3) the authorities must make sure that the delay does not result in exposure of the accused which may lead to mistakes on the part of the witnesses."

150. In ***Pramod Mandal v. State of Bihar*** (*supra*), the position was explained as under:

> "It is neither possible nor prudent to lay down any invariable rule as to the period within which a Test Identification Parade must be held, or the number of witnesses who must correctly identify the accused, to sustain his conviction. These matters must be left to the Courts of fact to decide in the facts and circumstances of each case. If a rule is laid down prescribing a period within which the Test Identification Parade must be held, it would only benefit the professional criminals in whose cases the arrests are delayed as the police have no clear clue about their identity, they being persons unknown to the victims. They therefore, have only to avoid their arrest for the prescribed period to avoid conviction. Similarly, there may be offences which by their very nature may be witnessed by a single witness, such as rape. The offender may be unknown to the victim and the case depends solely

on the identification by the victim, who is otherwise found to be truthful and reliable. What justification can be pleaded to contend that such cases must necessarily result in acquittal because of there being only one identifying witness? Prudence therefore demands that these matters must be left to the wisdom of the courts of fact which must consider all aspects of the matter in the light of the evidence on record before pronouncing upon the acceptability or rejection of such identification."

151. Again, in ***Matru @ Girish Chandra v. State of U.P.*** (*supra*), it was observed:

> "Identification tests do not constitute substantive evidence. They are primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on the right lines. The identification can only be used as corroborative of the statement in Court."

152. In ***Sayed Darain Ahsan @ Darain v. State of West Bengal (2012) 4 SCC 352***, the Supreme Court made the following observation regarding the necessity of a TIP in the context of the accused person being previously kown to the witnesses:

> ".....the appellant and the four eye witnesses belonged to the same locality and the four eye witnesses knew the appellant before the incident and were able to immediately identify the appellant at the time of the incident. It is only if the appellant was a stranger to the eyewitnesses that the test identification parade would have been necessary at the time of investigation."

153. The following observations by the Supreme Court in ***Munshi Singh Gautam v. State of M.P. (2005) 9 SCC 631*** clarify the position succinctly:

> "It is trite to say that the substantive evidence is the evidence of identification in court. Apart from the clear provisions of Section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in court. The evidence of mere identification of the accused

person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is, accordingly, considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exception, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code which obliges the investigation agency to hold or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration. [See *Kanta Prashad v. Delhi Administration AIR 1958 SC 350, Vaikuntam Chandrappa v. State of A.P. AIR 1960 SC 1340, Budhsen v. State of U.P. (1970) 2 SCC 128 and Rameshwar Singh v. State of J&K (1971) 2 SCC 715*]"

154. Consequently, this Court is of the view that the mere fact that a TIP was not held in the present case would not vitiate the testimonies of the witnesses who have identified the assailants in the Court.

Delay in recording statements of witnesses

155. The trial Court has also expressed reservations *qua* statements of witnesses recorded by the police a long time after the incident of rioting on 21st April 2010 and has found them to be of doubtful veracity. This is unfair to the witnesses, many of whom are themselves victims who have suffered injuries and damage to their properties. They had no control over the pace of the investigation and cannot be denied justice due to the police recording their statements at a later date.

Furthermore, merely because a witness belongs to the Balmiki community or may be closely related to a victim does not mean that such evidence should be disregarded *per se*.

156. In ***Khurshid Ahmed v. State of J&K AIR 2018 SC 2457***, the Supreme Court held as under:

> "28. If the evidence of an eyewitness, though a close relative of the victim, inspires confidence, it must be relied upon without seeking corroboration with minute material particulars. It is no doubt true that the Courts must be cautious while considering the evidence of interested witnesses. In his evidence, the description of the incident by PW9 clearly portrays the way in which the accused attacked the deceased causing fatal head injury as propounded by the prosecution. The testimony of the father of deceased (PW9) must be appreciated in the background of the entire case.
>
> 29. In our opinion, the testimony of PW9 inspires confidence, and the chain of events and the circumstantial evidence thereof completely supports his statements which in turn strengthens the prosecution case with no manner of doubt. We have no hesitation to believe that PW9 is a 'natural' witness to the incident. On a careful scrutiny, we find his evidence to be intrinsically reliable and wholly trustworthy.
>
> …..
>
> 31. When analyzing the evidence available on record, Court should not adopt hyper technical approach but should look at the broader probabilities of the case. Basing on the minor contradictions, the Court should not reject the evidence in its entirety. Sometimes, even in the evidence of truthful witness, there may appear certain contradictions basing on their capacity to remember and reproduce the minute details. Particularly in the criminal cases, from the date of incident till the day they give evidence in the Court, there may be gap of years. Hence the Courts have to take all these aspects into consideration and weigh the evidence. The discrepancies and contradictions which do not go to the root of the matter, credence shall not be given to them. In any event, the paramount consideration of the Court must be to do substantial justice. We feel that the trial

Court has adopted an hyper technical approach which resulted in the acquittal of the accused."

Lapses in investigation

157. The trial Court has discussed at length the lapses in the investigation by the police. As rightly pointed out in ***Ram Bihari Yadav v. State of Bihar*** (*supra*):

> "...the story of the prosecution will have to be examined de hors such omissions and contaminated conduct of the officials otherwise the mischief which was deliberately done would be perpetuated and justice would be denied to the complainant party and this would obviously shake the confidence of the people not merely in the law enforcing agency but also in the administration of justice."

158. In ***Budh Singh v. State of U.P. (2007) 10 SCC 496***, it was explained that "the defective investigation in itself is no ground for according an acquittal of the accused". In ***Karnel Singh v. State of Madhya Pradesh (1995) 5 SCC 518***, it was explained as under:

> "In the case of a defective investigation the Court has to be circumspect in evaluating the evidence and may have to adopt an active and analytical role to ensure that truth is found by having recourse to Section 311 or at a later stage also resorting to Section 391 instead of throwing hands in the air in despair. It would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective."

159. Again, in ***Dharmendrasinh @ Mansing Katansinh v. State of Gujarat (2002) 4 SCC 679***, the Supreme Court observed as under:

> "13. The High Court has also referred to a decision reported in *2000 SCC (Crl.) 522 Ambica Prasad and another v. State (Delhi Administration)* in which this Court observed that faulty investigation or witnesses turning hostile may not ultimately affect the merit of the case nor it could be a ground to disbelieve the statement of the prosecution witnesses.

> 14. In our view the High Court taking into account the observations made in the decision referred to above came to the conclusion that otherwise reliable statement of the witness PW-3 Ashaben could not be discarded or discredited even though there had been any fault or negligence in conducting the investigation, that too by itself, be not sufficient to dislodge the prosecution case as a whole."

160. The legal position that emerges is that while there may have been lapses in the investigation that alone will not lead to an acquittal of the accused. All it does is put the Court on caution in evaluating the evidence. A faulty investigation does not *ipso facto* result in affecting the credibility of PWs and completely discarding their evidence.

161. For instance, in the present case, there was no scaled site plan of the entire village drawn up for reasons best known to the police. Fortunately, the unscaled site plan of the entire village (Ex.PW-54/B) was not seriously questioned by the defence except for giving a preposterous suggestion that it was drawn up at the PS, without PW-54 even visiting the village. That was of course denied by PW-54. Other than this, there was no attempt even before this Court by the learned counsel for the defence to question that site plan.

162. Also, it should have been possible for the photographs to be shown to PWs in order to help them identify their own houses in those photographs. This may be at best a lapse on the part of the SPP who conducted the prosecution but did not affect the case because the authenticity of these photographs was never questioned by the defence.

163. The cross-examination of PW-3 who took those photographs shows that there

was no challenge to the fact that on the very day of the incident, i.e. 21st April 2010, these photographs were taken or that these were of the houses of the Balmikis in the Balmiki *basti* of the village. Perhaps even the videograph could have been shown to the PWs and they could have been asked to identify their houses from the video. But again, this *per se* did not impact the credibility of these witnesses or even for that matter the videograph that has been made by PW-4.

164. Consequently, the Court is unable to subscribe to the trial Court's opinion that defects in the investigation in this case substantially weakened the case of the prosecution.

Conduct of witnesses

165. The trial Court has disregarded the evidence of PWs 42 to 50 only on the ground that none of them came forward to save the two deceased although they were related to them. However, this fails to acknowledge that in a situation such as the one that existed on 21st April 2010, the Balmikis were in a vulnerable position, were disoriented and paralysed by fear. That they purportedly did not step forward to save the victims who were being attacked by the accused persons should not be held against them. As rightly pointed out by the learned counsel for the complainants, the settled principle of law is that there can be no speculation about how a person should react in a particular contingency. This has been explained in ***Jai Shree Yadav v. State of U.P. (2005) 9 SCC 788*** thus:

> "21. PW-3's evidence was challenged by the defence in the courts below as well as before this Court on the ground that he is a partisan and biased witness being the son of the deceased Abid Ali. This fact of course is not disputed by the witness because it is the case of the prosecution itself that the deceased Abid Ali was inimical to accused persons for various reasons mentioned hereinabove. PW1's presence

> at the place and time of the incident was challenged by learned counsel for the accused before us primarily on the ground that if really he was present at the time of incident he would have tried to protect his father and there was no material to show that any such thing was done by this witness. It was also pointed out from his evidence that though his father was profusely bleeding the clothes of this witness were not blood stained which indicated that he never even touched the body of his father which is an unnatural conduct on the part of a son present at the time of the murder of his father. This witness when cross examined in this regard, admitted that since his father had died already he did not carry the body of his father nor did he touch the body of his father. In our opinion different people react differently to a given situation and from the fact that this witness did not choose to fall on the body of his father or carry his dead body from where it was lying, by itself cannot be a ground to reject his evidence. We have already accepted the fact that the complaint in question was lodged by this witness soon after the incident in question and FW-8 in his evidence has spoken to the complaint being lodged by this witness and he being present throughout the investigation proceedings at the spot on that day. His presence at the place of incident also cannot be treated as a chance presence inasmuch as he is a resident of that village though his father stays in Deoria. Learned counsel for the appellant submitted that it is an admitted fact that this witness has stated that he is an educated person and according to this witness the complaint in question was not written down by him but by his brother-in-law which is also an unnatural conduct indicating that he might not have been present at the time of incident. We do not think this could also be a ground to suspect the presence of this witness at the time and place of incident."

Statements before the Commission of Inquiry

166. The testimonies of certain witnesses have been discredited by the trial Court on the ground that they had spoken differently before the Commission of Inquiry ('CoI') constituted to look into the matter. This is despite the well settled legal

position that statements made to a CoI cannot be relied upon in a trial. Section 6 Commission of Inquiry Act ('CoIA') reads as under:

> "6. Statements made by persons to the Commission. No statement made by a, person in the course of giving evidence before the Commission shall subject him to, or be used against him in, any civil or criminal proceeding except a prosecution for giving false evidence by such statement:
> Provided that the statement-
> (a) is made in reply to a question which he is required by the Commission to answer, or
> (b) is relevant to the subject matter of the inquiry."

167. The Supreme Court, in ***Kehar Singh v. State (Delhi Admn.)*** (*supra*), held as under:

> "Statements made by witness before a Commission could be used in a criminal trial neither for the purpose of cross-examination to contradict the witness nor to impeach his credit."

168. Further, the High Court of Orissa, in ***Rajat Kumar Das @ Dipu Das v. Republic of India 2004 Cri LJ 224 (SJ-Orissa)***, held as under:

> "Section 6 of the Commissions of Inquiry Act guarantees immunity to a witness. It clearly stipulates that a person making a statement in course of examination before the Commission enjoys certain protection, inasmuch as no statement made by a person in course of giving evidence before the Commission shall subject him to, or be used against him, in a civil or criminal proceeding. This protection is guaranteed in order to create confidence on the person to speak truth nothing but the truth before the Commission and not to hide anything. At the same time, the person is also cautioned that taking advantage of such immunity if he makes a false statement before the Commission, he would be prosecuted. The "statement" as per Section 6 of the Act is explained to be a "statement" made in reply to a question which he is required by the Commission to answer. Perusal of Sections 145, 155 and 157 of the Evidence Act clearly indicates that a previous statement can only be used for contradiction or for corroboration. The

restrictions imposed under Section 6 of the Commissions of Inquiry Act stipulating that a statement made by a person before the Commission cannot be used either for the purpose of contradiction in cross-examination of the said witness or for the purpose of impeaching his credibility, is aimed to protect the witness and to provide immunity to the said person"

169. Consequently, this Court is of the opinion that the trial Court was not justified in rejecting the testimonies of the PWs in question because they contradicted their statements before the CoI.

Scientific evidence v. ocular evidence

170. That the forensic evidence did not reveal the presence of hydrocarbons of petroleum would not discredit the ocular testimony of the PWs which finds corroboration from the photographic and videographic evidence available on the record. It cannot be denied that many houses in the Balmiki *basti* were burnt with some being damaged beyond recognition. Several PWs deposed that the Jat mob were carrying oil cans and were setting fire to the properties of the Balmikis. The trial Court itself has noted that the manner in which samples were collected from the scene of rioting was less than satisfactory. No specialist team was called and the extremely intricate job of collection of samples for forensic analysis was left to a team of non-experts. Thus, it is not beyond the realms of possibility that the purity of the samples tested by the FSL was compromised.

171. Doubts have also been expressed about the truthfulness of a number of PWs for the reason that their testimonies regarding the injuries suffered by them lack corroboration from the medical evidence. The trial Court proceeded on a surmise that the victims might have inflicted damage to their properties and injured themselves in the hope of claiming compensation from the Government of

Haryana. Nothing on the record substantiates such a presumption. This Court, in its decision in ***Dalip Kumar v. State (Govt. of NCT of Delhi)*** (decision dated 7th March 2014 by a Division Bench of this Court in Crl.A.749/2010), has recognized that ocular testimony which is categorical and candid cannot be rejected on the ground that it lacks corroboration from the forensic evidence.

172. The defence in these appeals have also sought to argue that oral evidence canot be allowed to override the scientific evidence on the record. Reliance is placed on the decision in ***Gajraj v. State (NCT of Delhi) 2011 (10) SCALE 695***. On the contrary, the Court finds that the law in this regard has been clearly explained in ***Gangadhar Behera v. State of Orissa (2002) 8 SCC 381*** where the Supreme Court cautioned that "it would be erroneous to accord undue primacy to the hypothetical answers of the medical witnesses to exclude the eye witnesses' accounts which had to be tested independently and not treated as the 'variable' keeping the medical evidence as the 'constant'". Reference may also be made to the decisions in ***State of U.P. v. Krishna Gopal (1988) 4 SCC 302*** where it was held that "where the eye witness account is found credible and trustworthy, medical evidence pointing to alternative possibilities is not accepted as conclusive". Observations to the same effect have been made in ***State of Haryana v. Bhagirath (1999) 5 SCC 96***; ***Thaman Kumar v. State of Union Territory of Chandiragh (2003) 6 SCC 380***; ***Ram Swaroop v. State of Rajasthan*** (*supra*); and ***Mallappa Siddappa Alakanur v. State of Karnataka*** (*supra*).

173. In deisbelieving the allegations that oil was sprinkled on the deceased victims, the trial Court has taken into consideration that the post-mortem reports of the deceased showed that they had expired due to ordinary burns and not due to oil

burns. However, as explained in ***Nanhau Ram v. State of M.P. AIR 1988 SC 912*** and ***Bhajju @ Karan Singh v. State of M.P. (2012) 4 SCC 327***, a medical opinion cannot wipe out the direct testimonies of a number of witnesses. Again, in ***Rakesh v. State of M.P. (2011) 10 SCALE 584***, it was explained that ocular testimony of the witnesses has a greater evidentiary value vis-à-vis medical evidence, unless the medical evidence makes the ocular evidence improbable, which it does not in the present case.

174. This Court, therefore, has no hesitation in concluding that the trial Court has erred in rejecting the testimony of the PWs with regard to the burning of the houses in the Balmiki *basti* by the accused persons due to the absence of hydrocarbons of petroleum in the forensic samples and lack of corroboration from medical evidence.

Irrelevant considerations in rejecting testimony

175. The trial Court also seems to have invoked a number of extraneous circumstances so as to disbelieve the testimonies of the PWs. This Court is unable to concur with its finding that victims were raising false claims and deposing falsely in Court due to the promise of compensation made by the Government of Haryana. Furthermore, the trial Court has cited the victims seeking shelter from one Ved Pal Tanwar who supposedly had political ambitions as a reason to doubt the veracity of their claims. This reasoning again does not appeal to this Court. The Court is informed that many of the victims have not been able to return to the village even as of date. That the fear of persecution persists in the minds of these victims even eight years after the incident only goes to show that the State has failed to ensure their safety and well-being. Many of them have lost property and

livelihoods as a result of this incident and it would be cruel to blame them for their own fate. Their testimonies deserve the greatest regard and must be considered fully in the Court's determination of this case.

176. There was no occasion for the trial Court to doubt the credibility of the PWs who were residents of the village. They have spoken clearly and cogently about the events that transpired on 21st April 2010. There is no material on the record which conclusively discredits their testimonies. The characterisation of some of these witnesses as unreliable and untrustworthy appears to be without foundation and, therefore, the Court rejects the trial Court's findings *qua* these witnesses.

Numerical rule in respect of Section 149 IPC

177. It has been submitted by learned counsel Mr. S. Rajan that many of the accused have not been identified by at least four witnesses as mandated by the decision of the Supreme Court in ***State of U.P. v. Dan Singh*** (*supra*) and at least 50% of the independent witnesses as mandated by the decision of the Supreme Court in ***Inder Singh v. State of Rajasthan (2015) 2 SCC 734***.

178. At this stage, the Court would like to discuss both these decisions at some length. In ***State of U.P. v. Dan Singh*** (*supra*), a member of the accused party happened to get injured when a scuffle broke out between members of a marriage procession consisting of members of a Scheduled Caste (Doms) on the one hand and the so-calle upper caste residents of the village on the other. The Supreme Court then observed that "a cry was raised that the Doms should be burnt and killed and that is precisely what happened". The ensuing violence resulted in the death of 14 members of the Dom community. Six of them were burnt after having locked themselves inside a house of one of the victims. The other eight were

chased down as the sought to flee and were mercilessly beaten and killed.

179. With 14 people having been killed, the Supreme Court held that it could not be said that an unlawful assembly having the common object of killing the Doms did not exist, even if the assembly of villagers was initially lawful and weapons more lethal than sticks or stones had not been used. The Supreme Court also significantly stated in the context of Section 149 IPC that "just because there may be some inconsequential contradictions or exaggeration in the testimony of the eye witnesses that should not be a ground to reject their evidence in its entirety". It was further pointed out that in cases of rioting, "where there are a large number of assailants and a number of witnesses, it is but natural that the testimony of the witnesses may not be identical. What has to be seen is whether the basic features of the occurrence have been similarly viewed and/or described by the witnesses in the manner which tallies with the outcome of the riot, viz., the injuries sustained by the victims and the number of people who are attacked and killed". Furthermore, it was opined that for the purposes of Section 149 IPC, it was not necessary for the prosecution to prove "which of the members of the unlawful assembly did which or what act".

180. The Supreme Court in ***State of U.P. v. Dan Singh*** (*supra*) was mindful of the observations made in ***Masalti v. State of U.P.*** (*supra*) and observed that:

> "... even though a very large number of members of the unlawful assembly had taken part in the attack on the Doms, it would be safe if only those of the respondents should be held to be the members of the unlawful assembly who have been specifically identified by at least four eye witnesses."

181. However, in the opinion of this Court, this observation cannot be said to be an

inviolable rule of law and each case has to be considered in terms of the probative value of the evidence and not merely a mathematical number. In that regard, the Supreme Court's observation in ***State of Maharashtra v. Ramlal Devappa Rathod (2015) 15 SCC 77*** that "evidence has to be weighed and not counted as statutorily recognized in Section 134 of the Evidence Act" is of particular relevance.

182. In ***Inder Singh v. State of Rajasthan*** (*supra*), the Supreme Court was dealing with another case involving mass killings pursuant to an unlawful assembly. The dispute was between co-villagers who were known to each other. In this context, it was observed after referring to the decision in ***Masalti v. State of U.P*** (*supra*) that "the normal test is that the conviction could be sustained only if it is supported by two or more witnesses who give a consistent account of the incident in question". In view of the facts of that case, it was further observed that "since the accused persons and the six material eye witnesses in this case are co-villagers, it is expected that at least three eye witnesses should be in a position to name the individual accused persons for sustaining his conviction".

183. Keeping in view the decisions of the Supreme Court and the facts and circumstances prevailing in the present case, this Court finds it appropriate to hold that a conviction may be sustained if an accused person has been named and identified by at least two reliable witnesses who give a cogent and consistent account of the incident.

Analysis of eye-witness testimonies

184. In the light of the discussion above, this Court now proceeds to consider the testimonies of those PWs upon which the prosecution has formed its case.

Kamala (PW-50)

185. This witness is the wife of the deceased Tara Chand and the mother of deceased Suman. There is no doubt that she is an interested witness, being a close relation of the two deceased. However, her testimony cannot be discarded only for that reason. The legal position in relation to the appreciation of the evidence of a related witness is fairly well-settled. To recapitulate in brief, in ***Dalip Singh v. State of Punjab AIR 1953 SC 364***, the Supreme Court explained:

> "A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

186. In ***State of Bihar v. Basawan Singh AIR 1958 SC 500***, the Constitution Bench of the Supreme Court held:

> "The correct Rule is this: if any of the witnesses are accomplices who are particeps criminis in respect of the actual crime charged, their evidence must be treated as the evidence of accomplices is treated; if they are not accomplices but are partisan or interested witnesses, who are concerned in the success of the trap, their evidence must be tested in the same way as other interested evidence is tested by the application of diverse considerations which must vary from case to case, and in a proper case, the court may even look for independent corroboration before convicting the accused person."

187. In ***Jayabalan v. U.T. of Pondicherry (2010) 1 SCC 199***, the Supreme Court held as under:

> "We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency."

188. Thus, the position that emerges from the aforementioned decisions is that their evidence is not to be looked upon with suspicion only because of their relationship with the deceased. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. Their evidence must be scrutinised carefully to ascertain if it has a ring of truth and must also be examined for consistency. Therefore, the testimony of PW-50 would be considered reliable if it withstands such scrutiny.

189. One of the criticisms against PW-50 by the trial Court is that while in her previous statement to the police, she named only 16 persons, during her deposition in Court, she has identified as many as 81 persons as being present. It is further commented by the trial Court that her eye sight was weak and there was an undisputed report of the Medical Board that she could only recognize objects and people within a range of "6-8m without assistance".

190. The Court has perused the rough site plan of village Mirchpur which shows that PW-50's house was in fact adjacent to the house of the deceased Tara Chand. The trial Court has observed that according to this witness, she was hiding in the

house of one Chander which was adjacent to the house of Mahender, which in turn was adjacent to the house of Tara Chand. In other words, all these houses were in a row next to each other. The trial Court has observed that the house of Chander was also damaged by rioting and fire and, therefore, "it is a mystery how this witness could have been hiding in this house".

191. This Court is of the view that this part of the testimony of the witness was not really shaken in her cross-examination. It was not justified for the trial Court to discredit her testimony on this aspect. Further, if her house was in fact adjacent to the house of Tara Chand and she could recognize objects and people up to a distance of 6-8m without assistance, the trial Court could not have rejected her testimony by alluding to her weak eye sight and the possibility that her view was not unobstructed. These appear to be surmises and conjectures made by the trial Court which find no basis even in the cross-examination of this witness.

192. In her statement regarding the incident of 19th April 2010, PW-50 mentioned that Karan Singh (DW-13) and Veerbhan were beaten up and that on the subsequent day, Gulaba (PW-48) was beaten up. The Court does not see any grave contradiction here. This witness was not saying that PW-48 was beaten on the same day and time along with Karan Singh (DW-13) and Veerbhan. Her testimony to the effect that Tara Chand and Suman were dragged out of the house, beaten up, doused in kerosene oil, and pushed back could not be rejected only because there was no corroboration. This was a witness who was clearly present at the spot and had witnessed this ghastly occurrence herself.

193. There is broad corroboration which emerges from the testimonies of the PWs of the fact that widespread rioting and arson was taking place in the village on the

date of the incident. PW-50 stands corroborated by Pradeep (PW-49) who clearly explains that the persons of the Jat community surrounded the Balmiki *basti* from all four sides and attacked with *jellies*, *gandasis* and lathis. He further states that they also started burning the houses of the Balmikis while simultaneously indulging in stone pelting. He states:

> "They came towards my house and set my house on fire. My sister Suman who was handicapped from one leg was inside the house. My father was also inside the house. On hearing the noise, my father Tara Chand and sister Suman came out but assailants from the Jat Community, who were also accompanied by the ladies of the Jat Community sprinkled petrol on them and set them on fire and pushed them inside the house. At that time, I was standing in the gali near the house and when I tried to save them stones were also thrown on me and I did not go forward to save them fearing for my life.... My father who was still alive at the time rushed to the house of his neighour Diwan Singh son of Muthra and in a burnt condition while my sister burnt to death inside our house only."

194. This corroborates the statement of PW-50 when she says:

> "My husband was beaten with *dandas* outside the house and kerosene was poured on him and after setting him on fire, he was pushed inside the house by Pawan, Kulwinder, Hoshiyara, Rajender and SHO Kajal. Bharpai the wife of Pale and along with the wife of Pappu, whose name I do not know but I can recognize by face sprinkled kerosene on my daughter Suman, set her on fire and pushed her inside the house. They also looted our property."

195. Therefore, it was plainly erroneous for the trial Court to state that no other witness supports the version of PW-50. The trial Court has also wrongly observed that the testimony of PW-50 contradicts the dying declaration made by Tara Chand and the medical evidence on the record. As will be discussed later, the medical evidence and the dying declaration in fact corroborate her version completely.

196. The trial Court also seems to have formed the view that the fact that PW-50 "did not raise an alarm or stop the assailants" throws up a doubt as to the veracity of her deposition. This, as has already been discussed, is deeply unfair to witness who was herself a victim of an attack by the members of the Jat community who vastly outnumbered those from the Balmiki community. The trial Court has also noted that PW-50 had grossly exaggerated when she stated the strength of the mob to be 400-500 persons when, in fact, the *gali* on which the house of Tara Chand was situated could hardly accommodate 100-150 persons. However, in the view of this Court, the point to be noted here is that a large mob had gathered there. Even a gathering of 100-150 persons was large enough to overwhelm the victims. In such a scenario, to expect the persons under attack to intervene or even accompany the wounded to the hospital when fearful of being attacked is not reasonable. Further, merely because PW-50 herself did not sustain any injuries does not mean that the incident did not happen in the manner described by her.

197. Most of the witnesses have stated that the police did not record everthing they said. The trial Court has itself observed that the investigation was faulty. In the circumstances, to characterize PW-50 as untruthful and to reject her entire testimony was wholly uncalled for. Also, at the time when she first spoke to the police, PW-50 was clearly traumatized. She states that the police met her on the date of the incident and interrogated her, but she could not clearly recollect whether her statement was recorded. She stated, "I was not in my proper senses at that time. I gave only 3-4 names as stated hereinabove to the police but I can identify the assailants as they are all residents of our village".

198. It must also be noted at this juncture that the settled legal position as

explained in several decisions of the Supreme Court such as that in ***Ramesh Harijan v. State of U.P. (2012) 5 SCC 777*** wherein it was opined:

> "....it is the duty of the court to separate grain from chaff. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim falsus in uno falsus in omnibus has no application in India and the witness cannot be branded as a liar. In case this maxim is applied in all the cases it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of credence, and merely because in some respects the court considers the same to be insufficient or unworthy of reliance, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well."

199. Thus, the Court finds that the testimony of PW-50 is reliable. However, as a rule of prudence as regards consistency, the testimony of PW-50 is relied upon only to the extent of the 14 accused she named in the first instance to the police, viz. A-34, A-23 (deceased), A-22, A-38, A-93, A-1, A-2, A-4, A-3, A-31, A-12, A-30, A-33, and A-42 (deceased). Then again, her testimony *qua* the said 14 would be relied upon only if corroborated by at least one other reliable eye witness.

Amar Lal (CW-1)

200. The testimony of PW-50 also receives corroboration from that of her son, Amar Lal (CW-1). He too states that he had seen A-20 and Rajender A-34 leading the crowd. He states that they came to the house were Tara Chand and Suman were present “inside the house due to fear”. He further clearly states how A-20 and A-38 sprinkled oil from the cans which they were holding while A-34 set the house on fire. When Tara Chand and Suman came out, they were caught by the persons

standing outside "and oil was sprinkled on them, after which they were pushed inside the house and the door of the house was latched with the help of *kundi*". He was in front of the house of Chander Bhan and requested the crowd not to do such acts "but nobody listened to us and during this process I was hit with stones, one of which hit my foot and another on my back due to which reason I backed out".

201. It cannot be doubted that CW-1, along with PW-50 and PW-49, was present at the spot and had witnessed all of these acts by the accused persons. CW-1 also states that the accused persons came out and began to dance naked whilst saying, "*ab inka kaam ho gaya inka matam karo*". He has specifically named A-23, A-25, A-38, A-87, and one Vipin son of Ishwar (not chargesheeted) as the individuals who had removed their clothes and danced in the *gali* in front of the house of Tara Chand before going away. He then noticed that the roof of the house began to collapse. At that time, the door fell and deceased Tara Chand ran out and entered the house of Deewana son of Mathura. Suman, however, was in the rear portion of the house and could not be saved. He then states that the police came to the spot and he along with Ashok Kumar son of Maha Singh shifted Tara Chand to the Government Hospital, Hissar.

202. He has stood firm even in the cross-examination and nothing emerged which would discredit his testimony. He also maintained that he had told the police what he had deposed in the trial Court. Consequently, this Court is of the view that this witness' testimony is of a reliable nature and does not concur with the trial Court's finding that his testimony is only partly reliable.

Pradeep (PW-49)

203. This witness is also the son of deceased Tara Chand and has spoken of the Jat

community mob setting his house on fire and also that, when Tara Chand and Suman tried to flee, they were pushed back into the burning building after oil was sprinkled on them. He also speaks about the boys from the Jat community mob dancing naked on the street in front of the house. He further states that his father Tara Chand ran out of the burning house and into the house of Deewana son of Mathura. In other words, this witness' narration of the incident is wholly consistent with the depositions made by the other family members of the deceased, viz. CW-1 and PW-50. His presence at the spot cannot be denied and as such his testimony is reliable and consistent.

204. The trial Court has invoked various lines of reasoning to discredit this witness. However, this Court cannot concur that his testimony lacks veracity due to the fact that he is not shown to have assisted in the removal of the body of Suman or to have accompanied Tara Chand and Suman to the hospital. In this regard, he has stated that he was tending to his unconscious mother at the time. This explanation has, however, been rejected by the trial Court based on the conjectural reasoning that "she too would have been removed to the hospital" if it was indeed the case that she had become unconscious.

205. The trial Court has also rejected his identification of 24 accused persons in Court on the ground that he had admitted to making only one of the three statements under Section 161 Cr PC attributed to him. It was further held that although he is shown to have affixed his signatures on the seizure memos of the burnt motorcycle and ashes, this would only establish his presence at the spot at the time of the exhibits being lifted and not when the incident actually took place.

206. As per the view of this Court, his identification of the accused persons in the

Court cannot be discarded. It was not his fault that no TIP was conducted. The rejection of his identification of the accused in the court for the first time could not have been discarded by the trial Court only on that ground. As already noticed, rejection of dock identification is not a foregone conclusion especially in a case like the present one where there are a large number of accused persons who were rioting as part of a mob. The trial Court should also have considered the trauma being faced by the victims who might have been unable to name all of those involved at the first time of asking. Thus, PW-49 is also reliable and consistent in his narration of the incident dated 21st April 2010. The trial Court has erred in categorising this witness as only partly reliable.

Rajbir (PW-10)

207. PW-10 deposed that there was a dispute between the Jats and the Balmikis on 21st April 2010 due to which the Jats "got together and came to the Balmiki *mohalla* and there was a *marapiti*". He has spoken of them coming armed with *jellies*, *lathis* and oil cans and that they pelted stones at the Balmikis. He has stated that he could recognise the "son of Pale whose name I do not know and one boy whose name is Petla". Upon the accused persons being paraded before him, PW-10 correctly identified A-34 as the person whom he recognised as part of the mob on 21st April 2010.

208. PW-10 has been held to be wholly unreliable for the reason that even though he did not name anyone in his statement to the police, he has identified A-34 while deposing in Court. The trial Court disregarded his dock identification of A-34 on the basis that the latter was previously known to the witness. However, this would not result in the entire testimony of this witness being termed unreliable. These

witnesses were not in control of what the police recorded and many of them maintained that the police did not record everything that they had stated.

Sunita (PW-13)

209. PW-13 has been disbelieved by the trial Court only because she had wrongly shown the Medico Legal Report ('MLR') of her ten year old son as her own. Her identity was also in doubt only because her mother-in-law showed the Court her election card which showed her name as Kanta. The fact remained that in her deposition, it emerged that she had affixed her thumb impression on the MLR of her minor son. Also, she explained that she had other aliases which she was known by. The election card gave one of the aliases as 'Kanta'. Therefore, this by itself was not a justification for the trial Court to hold her entire testimony to be unreliable.

Sandeep (PW-28)

210. In terming PW-28 to be only a partly reliable witness, the trial Court had observed that his testimony could not be relied upon without reliable corroboration. This Court, having perused his testimony, finds that his narration of events stands corroborated by as many as 13 other witnesses. Thus, the testimony of this witness too is reliable and consistent.

Sheela (PW-32)

211. PW-32 was working as a *safai karamchari* at a school which was situated more or less within the village. She has stated that her duty time is from 8 am to 2 pm. She states that she came back towards her home upon hearing that there was a commotion in the village. This is not that surprising and the school being not too far from the site of the incident, the trial Court was wrong in terming her testimony

to be unnatural. This Court is of the view that her deposition is reliable and trustworthy.

Santra (PW-30)

212. PW-30 was a neighbour of Tara Chand and Suman and, therefore, her testimony was important. She returned to the village in the afternoon of 21st April 2010 and locked herself inside the house when she saw the rioting mob. She too identified assailants for the first time in the Court. She identified A-34 as the person who burnt the house. She also identified A-38 as the person who broke into her house and broke her water tank. As has already been discussed, the mere fact that PW-30 has identified A-34 and A-38 for the first time while testifying in Court would not make her entire testimony unreliable.

213. PW-30 has been disbelieved also because the accused were not arrested at her instance and no TIP was conducted. This Court has already observed that the non-conduct of TIP would not vitiate the testimony of a witness who is otherwise clear and consistent in their deposition. This Court, therefore, cannot concur with the trial Court's view that PW-30 is unreliable. She is a reliable witness whose testimony appears to be truthful.

Rani (PW-33), Sanjay (PW-36), and Meena (PW-37)

214. The trial Court has also wrongly disbelieved Rani (PW-33) only because she did not suffer any injuries. It is not necessary that every eye witness should suffer injuries for their depostions to be deemed trustworthy. While it is true that in the statement recorded on 30th April 2010, she did not name any accused, she is a resident of the same village and could probably not muster the courage to speak to the police and name the accused in the first instance. While deposing in the Court,

she came from Ved Pal Tanwar's farmhouse where she had sought refuge. While deposing in Court, she identified A-3, A-6, A-33, and A-34. While it is true that she stated that she was hiding in the *gali*, there must have been sufficient time for her to notice who the assailants were.

215. The statement of her husband, Sanjay (PW-36), is also to the same effect. He too was deemed to be unreliable by the trial Court and his testimony was held to be only admissible for corroborative purposes. In his deposition in Court, he has identified A-34, A-23. A-52, A-46, A-64, A-1, A-47, A-26, A-11, A-93, A-21, A-77, A-78, A-66, A-42, A-80, A-94, A-13, A-38, and A-25. He had also named A-58 in his deposition. An objection was raised by the defence that the statement made by this witness to the police noted that he could not name any of the assailants. The following exchange is noteworthy:

> "Court Question: Did you tell the police the names of the assailants during interrogation?
>
> **Ans:** I had told the police all the aforesaid names which I have now stated in court.
>
> Court Question: Did you tell the police during interrogation that you could identify other persons involved in the incident whose name you did not know?
> **Ans:** Yes, I had told the police that I could identify them."

216. It therefore appears that, as with other witnesses, the statement of PW-36 to the police was not recorded properly even though he is stated to have named the assailants therein. In that view of the matter, this Court is inclined to believe this witness' testimony as reliable and trustworthy.

217. Meena Kumar (PW-37) also falls in the same category. He too denies telling

the police that he could not identify the assailants who were part of the mob. In fact, he states that he had informed the police that he could identify some of them. While deposing in Court, he identified A-34, A-13, A-78, and A-11. The trial Court has erred in discarding the testimony of this witness merely because no TIP was conducted. As has already been discussed, this is not a strong enough ground to reject the testimony of a witness who is otherwise consistent and cogent in his narration of events. In that view of the matter, this Court finds this witness to be reliable and trustworthy.

Mahajan (PW-38), Sube Singh (PW-39), and Vijender (PW-40)

218. PWs 38, 39, and 40 have been held to be only partly reliable by the trial Court. PW-38, who is an injured witness, named 42 assailants in his statement under Section 161 Cr PC which was recorded on 23rd April 2010. However, he was able to identify only some of them in Court. He also made a first time dock identification of A-79 and A-52. This does not make his testimony unreliable. On the contrary, it showed that of the several accused paraded before the Court, he pointed out only some of them specifically which actually makes his testimony credible. There was no justification for the trial Court to hold that PW-38 was only partly reliable.

219. PW-39 did not suffer injuries. In his statement under Section 161 Cr PC recorded on 21st April 2010, he named 27 assailants. In Court, however, he identified only A-38, A-34, A-3, and A-92. Merely because he was shown to be wearing dark glasses at the time of the incident does not render his testimony improbable.

220. PW-40 named 27 assailants in his statement under Section 161 Cr PC dated

21st April 2010. In Court, he could identify A-34, A-94, A-52, A-21, A-13, A-79, A-32, A-20, and A-33. Merely because he has not received injuries, it could not have been held that his presence at the scene was not established. Also, because he identified A-21, A-79, and A-52 for the first time in the trial Court, this would not render his testimony to be unreliable. It appears that he is a natural witness who was present at the scene of occurrence.

Dhoop Singh (PW-29)

221. This witness had received grievous injuries during the incident of 21st April 2010. He has deposed that on that morning, "persons from the Jat community created a *rolla/jhagra* near the Balmiki *mohalla*". He then states that more than 400 persons belonging to the Jat community came to the Balmiki *basti* with buggies filled with stones, bricks, and oil cans. He states that he was at his shop when the Jat community mob surrounded the Balmiki *basti* and started burning the houses of the Balmiki community.

222. Upon hearing a commotion outside his shop he came out to see A-20, A-77, A-52, and A-94 breaking and entering into his house. He then states that A-20 gave a *lathi* blow to his left arm which resulted in a fracture. A-77 is stated to have given a *danda* blow to his left leg. He then states that they proceeded to break the water tank and set fire to his four shops and all the articles therein. The fire then spread to his house which was completely burnt. He goes on to state that at around 11 am, a government vehicle removed him along with two others to the hospital where he was treated for his injuries.

223. The trial Court has rightly held this witness' testimony to be wholly reliable and this Court concurs with that finding.

Vicky (PW-42)

224. There has been an extensive discussion by the trial Court of the deposition of PW-42. It is strange that the trial Court doubts his testimony only because he was leading the agitation for justice in this case. In the Court, he identified several assailants. His father Dhoop Singh (PW-29) suffered grievous injuries. Since all the Balmikies were being attacked, many of them could not accompany the other injured persons to the hospital. That was true of PW-42 as well. Only because he did not accompany his injured father to the hospital would not mean that PW-42 was not at all present.

225. The fact that PW-29 did not mention the presence of PW-42 should not come as a surprise. In the commotion as a result of the rioting, where more than 150 Jat community members had surrounded the Balmiki *basti*, it is possible that PW-29 did not notice the presence of his son, PW-42. On the contrary, PW-42 has given extensive details which support the prosecution case considerably. The relevant portion of his testimony worth reproducing is as under:

> "....in the morning of 21.04.2010 at about 8 AM Rajender Son of Pale was passing through the main gali in his boogie while he was going to his house. He had some verbal altercation with some boys of the balmiki community but I was not there. He ran away from that place raising an alarm"choorya ne mardiya, choorya ne mar diya".He went to the main *Chaupal* of the jat community andcollected large number of boys. From there all these boys came towards our (balmiki) houses armed with dandas, gandases, stones and when they came towards the houses there was an altercation between them and us(apas mein jhagra hua)and after some time theseboys ran back towards the houses belonging to persons from the jat community. Gulaba, Chowkidar was coming from the gali and was crossing from the gali of Rajender Son of Pale. There Gulaba was stopped byRajender Son of Pale andRishi Son of Satbirand beaten with dandas. Gulaba came towards our

houses and started crying. He was injured on his knees and legs as he wasbeaten with dandas. Thereafter these boys from the jat community called more persons and boys belonging from jat community from out side areas (out side the village). About 1000-1500 persons from the jat community gathered at the jat choppal and from there they came to our balmiki *basti*. They were armed with lathies, gandasi, stones,oil canes and petrol. While these boys were still coming from choppal side, some persons from the village from the jat community came to us and told us to gathered at our choppal for a settlement. While we were at choppal these jat boys who were coming from the choppal in the meanwhile started burning houses of persons from the balmiki community. they started pelting stones on us while we were still standing in the main gali. they surrounded our *basti* from all the four sides. They burnt the house of Tara Chand, Sube Singh, Chander Singh, my own house, the house of Gulaba and all his three sons. They burnt about 20-25 houses. We were surrounded from all the four sides and it became difficult for us to save our lives. We did not know whether to save ourselves, or our childrenor what to do. My father Dhoop Singh was unwell as he was suffering from respiratory problem. He was alone at our house and my mother and two nephews were also at home. When I saw what was happening I ran back to my house apprehending danger to the lives of my family members. At that time these boys were in the process of setting the house of Chander on fire which is on the corner of the main gali. I told my father to move in view of the prevailing circumstances but since his condition was serious he could not move. In order to save my other family members my mother and two nephews escaped from the back side of the house whereas I remained in the house with my ailing father who could not move. We are having four shops and I had shut the main gates but there boys came there and while I and my father were hiding inside the house behind the shops, I saw that the gates of our shops were broken and a large numberof boys jumped inside and started setting the shops on fire. I could see Ramphal Son of Prithvi, Sanjay Son of Daya Nand, Pardeep Son of Jaiveer, Sonu Son of Wakil, Pardeep Son of Suresh, Satyawan Son of Rajender, Rajpal Son of Sheo Chand, Bobbal Son of Tek Ramwho were sprinkling oil on the walls of our shop and setting it on fire along with many other boys whose name he does not remember but can tell after refreshing his memory and also

after seeing their faces. He has alsostated that many of these boys have not been apprehended till date. When these boys jumped and came inside my father pleaded to them with folded hands and asked them what was our fault. On this Ramphal hit my father with a lathi on his arm and Sanjay Son of Daya Nand hit my father with a lathi on his legs. The arm of my father was fractured and he received injuries. Sanjay then shouted to the others "vickey ko dundo kare hai". I was hiding inside the house. My father had fallen down and while these boys were still searching for me he shouted to me from outside to run away as these boys would otherwise kill me. On getting an opportunity I escaped by jumping from the terrace. Two or three of these boys who sawed me and followed me but I managed to escape. While my house was set on fire and was burning I saw 2-3 police persons watching the same. These boys were also exhorting and shouting "chura ne aag lage do, deda ne aag lago de". They burnt our houses and many of these boys were dancing naked on the streets which I sawed when I climbed on the roof in order to save myself. Out of them I could recognize Sumeet Son of Satyawan, Kulwinder Son of Ram Mehar. When the police came at about 1-1.30 pm while the houses were still on fire and I had come back to my house to search for my father, I found Sanjay Son of Ammar Lal on the back side of my house to search for my father, I found Sanjay Son of Amar Lal on the back side of my house standing with a *danda* in his hand shouting "koi chura marya ya nahi". My uncle Jaiveer had entered the house from the back side and saved my father and when I came back to my house after the police had come I found that my father had been removed to my grandfather's house by my uncle Jaiveer. Ambulance had come to the village and my father Dhoop Singh was removed to the hospital along with Tara and his daughter Suman who were burnt to death."

226. PW-42 was subjected to extensive cross-examination, but nothing which would aid the defence emerged. He maintained in his cross-examination as under:

> ".... I had told the police that in the morning of 21.4.2010 at about 8 AM Rajender Son of Pale was passing through the main gali in his boogie while he was going to his house when he had some verbal altercation with some boys of the balmiki community. I also told the

police that Rajender ran from that place raising alarm "churya ne mar diya, churya ne mar diya" and thereafter he went to the main choppal of the jat community and collected large number of boys from where all these boys came towards our (balmikies) houses armed with dandas, gandas, stones and when they came to our houses there was a quarrel between them and us.I also told the police that after some time all these boys ran away back towards the houses belonging to the jat community and Gulaba, Chowkidar was coming from the gali and was crossing from the gali of Rajender Son of Pale where Gulaba was stopped by Rajender Son of Pale and Rishi Son of Satbir and beaten with dandas.I also told the police that Gulaba came towards our houses and sttarted crying and he was injured on his knees and legs as he has been beaten with *dandas* and thereafter these boys from the jat community called more persons and boys belonging from the jat community from out side areas (out side the village) and about 1000-1500 persons from the jat community gathered at the jat choppal and from there they came to our balmiki *basti*..."

227. PW-42 was able to correctly identify several of the assailants in the trial Court. He identified A-3 as the person indulging in the stone pelting; A-90 as the one who had broken the door of the house and set it on fire; A-38 as an assailant indulging in quarrelling and stone pelting; A-23 as the one who hit his father Gulaba (PW-48) with a *lathi*; A-34 as the assailant accompanying A-23; and A-20 as one of those who were setting the houses on fire. The trial Court wrongly relied on the statement which he gave before the CoI to the effect that his house was not situated next to those which were burnt. However, this would not mean that he did not witness the burning of the houses. There was sufficient independent corroboration in terms of photographs, videograph as well as the testimonies of other witnesses. In the considered view of the Court, PW-42 is in fact a reliable witness and should have been held to be as such by the trial Court.

Dilbagh (PW-43)

228. Although this witness was held to be only partly reliable, this Court is of the view that he is in fact a wholly reliable witness. Merely because he himself did not suffer injuries did not mean that he was not present at the scene of occurrence. In his cross-examination, he was very categorical and stated as under:

> "On 21.04.2010 the stone pelting continued for about one and a half hours. It is correct that the stone pelting was between Jats and the Balmikis. Vol. the Jats had started pelting the stones first. It is wrong to suggest that stone pelting resulted because the boys belonging to the balmiki community had first caused beating to Rajender Son of Pale and Karampal Son of Satbir who were coming from their fields in the morning on their boogie through the main gali. It is wrong to suggest that the beating had been given because Rajender could not distribute milk in the village which milk he used toget from Lakshay Dairy."

Sanjay (PW-44)

229. He had named a number of accused in his statement under Section 161 Cr PC which was given on 21st April 2010. However, in the trial Court, he only identified A-34, A-23, A-38, A-39, A-13, A-20, A-94, and A-66. He spoke about his father Gulaba (PW-48) receiving injuries as a result of *danda* beatings. As far as this witness is concerned, he gave several details in his examination-in-chief. Despite the fact that a few more details were elicited by the SPP regarding names of the persons present, PW-44 still maintained that he was an eye witness himself and that he could identify many of the boys by face if shown to him. Merely because he did not accompany PW-48 to the hospital did not mean that he was not present at the spot. The trial Court erred in holding that his conduct was not natural and probable.

230. The comment that "he has changed his stance before various Courts" is

contrary to the trial Court's own conclusion that his statement before the CoI could not have been used against him during his deposition in the trial Court. In the considered view of the Court, the characterisation by the trial Court of PW-44 as only partly reliable was not justified and he should not have been characterised as such.

Manoj (PW-45)

231. He named 34 assailants in the statement given to the police by him on 21st April 2010. In his subsequent statement on 27th June 2010, he named A-27, A-78 and A-90. While deposing in Court, he identified A-69, A-50, A-57, A-40, A-29, A-2, A-65, A-79, A-14, A-22, A-77, A-52, A-66, A-23, and A-38. They all belonged to the same village and therefore, his identification of these accused in the Court could not have been held to be 'unreliable'. The rejection of his testimony on this aspect only because there were no photographs showing his presence is suspicious since the photographs were taken long after the conclusion of the event. There is sufficient corroboration of his evidence which makes his testimony reliable and consistent.

232. In his cross-examination also, PW-45 was consistent. He pointed that the police officials came to the village much later only after a complaint was given. He confirmed that PW-48 was injured and was treated subsequently for the same. He has withstood the cross-examination by the defence. He was a truthful witness who maintained that he did not receive injuries but got compensation for the damage to his property. The stone pelting, arson, and looting, according to him, continued till 1 pm. His initial statement was recorded on 21st April 2010 itself. The leading questions put by the prosecutor only helped PW-45 to identify the burnt

motorcycle belonging to Sunil son of Brij Bhan, the brother-in-law of PW-45. There is nothing in the cross-examination of PW-45 that persuades the Court to disbelieve this witness. Thus, he should have been held to be a reliable witness whose testimony was natural and trustworthy.

Satyawan (PW-47) and Gulaba (PW-48)

233. As regards PW-47, only because he identified A-34, A-20, and A-94 for the first time in the trial Court, whereas he had named two assailants in his previous statement, did not make him an unreliable witness.

234. PW-48 was an injured witness. He had received three simple injuries. The trial Court itself held that his presence at the time of the incident could not be doubted. He cannot be said to be an unreliable witness as regards the incident of rioting. He noticed women with oil cans in preparation for the riot that was to follow and his testimony is vital in throwing light on the conspiratorial element of the incident of 21st December 2010. PW-48 had named 43 persons in his previous statement to the police and has identified only a few of them while deposing in the trial. Nevertheless, this is not a witness who should have been held as only partly reliable.

235. Thus, although the trial Court has held all but two of the 23 witnesses who supported the case of the prosecution to be wholly unreliable or only partly reliable, this Court is of the view that these witnesses have in fact deposed consistently and cogently and nothing material emerges from their testimonies which would raise doubts as to their veracity. The prosecution, through the testimonies of these witnesses, has been successful in its endeavour to establish several aspects of the incident of 21st April 2010.

Dying declarations of Tara Chand

236. The dying declarations of the deceased Tara Chand are further important pieces of evidence for the prosecution. It must be recalled that Tara Chand was removed from the spot first and admitted to the General Hospital, Hissar by SI Bani Singh (PW-64) on the instructions DSP Abhey Singh (PW-66). The depositions of PWs 64 and 66 clearly bear out these facts. He was rushed to the said hospital at around 2:30 pm on 21st April 2010 as shown by the bed-head ticket (Ex.PW-52/B). He had suffered deep burns all over the body except the axillary region and the inguinopubic region. An application was moved before the Medical Officer ('MO') by PW-64 to seek his opinion regarding the fitness of the patient to make a statement. The said application is Ex.PW-64/B.

237. Dr. Dinesh Kumar (PW-68) certified at 3.50 pm that Tara Chand was fit to make a statement. PW-64 then recorded the dying declaration which bears the right thumb impression ('RTI') of Tara Chand and was in fact countersigned by PW-68 as well as Amar Lal (CW-1). This is Ex.PW-64/C.

238. Dr. Dinesh Kumar (PW-68) was cross-examined at length, but nothing useful could be elicited by the defence to discredit his testimony. He denied the suggestion put to him in cross-examination that "Tara Chand had never regained consciousness so as to be able to make the statement".

239. Mr. Hariharan, learned Senior Counsel, submitted that no blood pressure or pulse could be recorded and in that situation, Tara Chand could simply not have made a dying declaration. This suggestion was put to PW-68 who denied it. He categorically stated that "it is wrong to suggest that once BP and Pulse are not

recordable, patient cannot be conscious and fit to make a statement. Vol. Consciousness is different from the recording of BP and Pulse". Therefore, the attempt by the accused to show that the dying declaration could not have been recorded had failed and this was somehow overlooked by the trial Court.

240. The first dying declaration made by Tara Chand before PW-64 clearly points out that at around 12 noon, Tara Chand and Suman were in the house. He mentions that A-34 was present along with 20 others. He then states that "*Kamre mein weh meri ladki Suman ba umar 18 varsh ko aag laga kar kamre ko bahar se kunda laga ke Jati sukar galian de rahe the. Darwaja jalaya*". Tara Chand mentioned that after the house was burnt and he emerged from it, he was attacked by *lathis* and then he rushed to Diwan Singh's house whereas Suman could not leave the house. His other house was also burnt. He then mentions Amar Lal (CW-1) and his own brother-in-law Ashok Kumar taking him to the hospital in the police gypsy. He then mentions that the names of the other persons involved in the attack on his person would be disclosed by Amar Lal (CW-1) whereas he could recognize them if they were produced before him.

241. There is nothing in the first dying declaration of Tara Chand which is not consistent with what has been spoken by PWs 49 and 50 and CW-1. His post-mortem report indicates that he had suffered extensive burns and, therefore, again the medical evidence cannot be said to have contradicted the testimonies of PWs 49 and 50 and CW-1.

242. The second dying declaration of Tara Chand was recorded by the Duty Magistrate. This was pursuant to an application moved before Harish Goel (PW-55) by PW-64. PW-55 reached the General Hospital at 5:30 pm. PW-68 gave

him a certificate regarding fitness of the injured and his ability to give a statement. Then PW-55 again recorded the statement of Tara Chand as under:

> "Q: *Apka naam kya hai*?
> Ans.: Tara Chand.
>
> Q: *Apko Kya hua hai*?
> Ans.: *Mai apne ghar mei tha. Mera ghar jato ne phook diya. Aag Rajender ne lagai thi. Rajender ke bap ka naam Pali hai*.
>
> Q: *Apko kuch aur kehna hai*?
> Ans.: *Nahi*."

243. Therefore, on two occasions, A-34 was clearly mentioned and even his father's name was clearly mentioned. How these dying declarations should simply be rejected, as suggested by learned Senior Counsel Mr. Hariharan, is not understood. There was no need for PW-55, who was a Judicial Magistrate, First Class, to make any false statement whatsoever. His entire testimony in this regard requires reproduction as under:

> "On 21.04.2010 IO ESI Bani Singh had moved an application before me for getting the statement of Tara Chand recorded. The application of ESI Bani Singh is Ex. PW 55/A which was recieved in the Court at about 5:15 pm and bears my signatures at point A. I proceeded towards general hospital, Hissar. I reached at general hospital, Hissar at 5:50 pm and there Dr. Dinesh Kumar Prajapat, Medical Officer met me and told me that patient Tara Chand was lying at bed no. 6 of the emergency ward. Thereafter I proceeded towards bed no. 6 Dr. Dinesh Kumar Prajapat has given certificate regarding fitness of Tara Chand to make his statement. Thereafter I recorded the statement of Tara Chand whcih is Ex. PW 55/B which bears my signatures at point A. The fitness certificate of Dr. Dinesh Kumar Prajapat in respect of the patient Tara Chand which he had given before I proceeded to record his statement is present at point Mark B and the certificate of fitness given by him after I completed the recording of Tara Chand is present at point Mark C. Thereafter I made my endorsement and gave my

> certificate which I duly identity. The said certificate is Ex. PW 55/C bearing my signatures at point A."

244. PW-55 too was subjected to extensive cross-examination, but nothing of any assistance to the defence came of it. The only noteworthy statement was that the dying declaration was not sealed on 21st April 2010 but on 23rd April 2010.

245. Even the testimony of PW-64 shows that Tara Chand and Suman were burnt and they were taken in a burnt condition accompanied by CW-1 and Ashok Kumar to the hospital. PW-64 has clearly spoken about PW-68 opining about the fitness of Tara Chand to make a statement. PW-64 has also spoken about recording of the statement of Tara Chand at the first instance and then going again before PW-55 with an application and PW-55 coming to the hospital to record Tara Chand's statement thereafter. PW-64 specifically denied the suggestions that Tara Chand was not fit to make a statement and that he recorded Tara Chand's statement of his own accord and fabricated the endorsement from the doctor.

246. PW-66 also confirms that it is he who gave directions to PW-64 to take Tara Chand to the General Hospital and then get his statement recorded. The time of PW-55 recording the statement of Tara Chand is given by PW-68 as about 5:15 to 5:30 pm and he clearly stated that, "at that time, the patient was conscious".

247. In ***Shama v. State of Haryana (2017) 11 SCC 535***, the Supreme Court observed:

> "In the absence of any kind of infirmity and/or suspicious circumstances surrounding execution of the dying declaration, once it is proved in evidence in accordance with law, it can be relied on for convicting the accused, even in the absence of corroborative evidence, but with the rule of prudence that this should be done so with extreme

care and caution."

248. Furthermore, in ***Gokal v. State*** (decision dated 12th May 2009 in Crl.A.228 of 2001) wherein it was observed as under:

> "The fact that the deceased was suffering from severe burn injuries does not necessarily lead to a conclusion that she was not in a position to inform the doctor about the said incident, particularly in the light of the deposition of the doctor who had conducted the post-mortem of the deceased that a patient who has sustained 98% burn injuries can remain conscious for sometime after sustaining the injuries."

249. It cannot be said in the present case that the dying declaration is uncorroborated. As has already been demonstrated, there is sufficient evidence in the form of the depositions of CW-1 and PWs 49 and 50 as well as those of PWs 55, 64 and 68 that fully corroborate the dying declaration of Tara Chand, which is a substantive piece of evidence which can be relied upon to convict the accused persons.

Analysis of defence witnesses

250. As far as the defence evidence is concerned, there were as many as 44 defence witnesses examined of which DWs 6 to 9, 11 to 17, 18 to 25, 28, 36, 37, 40, and 41 were public witnesses. Karan Singh (DW-13), who was himself injured in the incident of 19th April 2010, came to be examined as a defence witness. Veerbhan had already deposed against the prosecution and turned hostile in the trial arising out of the FIR registered for the incident of 19th April 2010. Therefore, both Karan Singh (DW-13) and Veerbhan were understandably dropped by the prosecution and one of them was thereafter examined as a defence witness. However, there were several other witnesses who could sufficiently prove the incidents that occurred on 19th April 2010 as well as on 21st April 2010.

Murder or culpable homicide?

251. The trial Court, in its judgment dated 24th September 2017, has chosen to convict only three of the 97 accused persons for the killings of Tara Chand and Suman, viz. A-20, A-34, and A-38. It has also chosen to only convict the said three accused for the offence under Section 304(II)/120B IPC even though they were charged with having committed murder punishable under Section 302/120B IPC. The trial Court's decision to convict these three accused persons under the lesser offence has been challenged in the appeals preferred by the State and the complainants along with challenges to the acquittals of the other accused persons in this case. According to the State, A-3, A-25, A-13, A-27, and A-64 ought to have also been convicted under Section 302/120B IPC and Section 3(2)(iv) and (v) POA Act.

252. In this context, it requires to be noticed first that according to the trial Court, this was a case of culpable homicide not amounting to murder as the evidence of the prosecution did not prove that the accused persons intended to commit the murder of Tara Chand and his daughter Suman. It has already been noticed that PWs 49 and 50, the son and wife of Tara Chand, and CW-1 Amar Lal, the other son of Tara Chand, have all consistently spoken about Tara Chand and Suman being beaten, doused with oil, set afire and then pushed into the house.

253. The trial Court erred in holding that the dying declaration of Tara Chand did not support the testimonies of PWs 49 and 50 and CW-1. It has already been noticed that Tara Chand specifically named A-34 in both his dying declarations and also added that A-34 was not alone but was accompanied by others. He stated that CW-1 would give the names of the other persons. For the reasons already

explained, this Court has held that the two dying declarations of the deceased Tara Chand are reliable and have been recorded in the manner required by law. Further, these three witnesses have specifically named those who set fire to Tara Chand and Suman.

254. As far as PW-49 is concerned, he named A-34, A-2, A-38, Vipin son of Joginder, A-18, Vikas son of Suresh, A-39, A-13, A-3, A-23, A-25, A-20, Rinku son of Dayanand, A-64, Sumeet son of Dayanand, A-27, A-40, and A-87 when deposing in the trial. He was unable to be shaken in the cross-examination. He also mentioned about the wife of Pale, the wife of Pappu, and the wife of Satyawan being involved in the incident.

255. Turning to PW-50, she is clear that Tara Chand was set on fire and pushed inside the house by A-2, A-34, A-31, A-38, and A-37. She has also named A-1, A-3, and Balwan son of Dharambir as being part of the mob that attacked her home. Therefore, the involvement of A-34, A-38, and A-2 has been spoken to by both PWs 49 and 50. Amar Lal (CW-1) has also specifically named A-20 and A-34 as leading the crowd and also that A-38 and A-20 were sprinkling oil from the cans. The roles of A-34 and A-38 are, therefore, confirmed by all three of these witnesses. A-20 has been named by CW-1 and PW-49.

256. The trial Court has employed the strange reasoning that, had the doors been locked as spoken to by the witnesses, Tara Chand would not have been able to run to the house of his neighbour. What the trial Court has missed is the deposition of PW-49 wherein it is stated that the door collapsed with the house having been burned down and only thereafter, did Tara Chand run to the house of his neighbour. This is clearly spoken to by CW-1 himself when he states that "when

these persons went away I noticed that the roof of our house started collapsing. The door of our house also collapsed and my father who was in the front portion of the house ran out and entered the house of Deewana son of Mathura".

257. The retrieval of Suman's body was done by breaking through the roof of her room. It is possible that the door was locked from inside by Suman due to the fear of the ongoing riot. The fact remains that no one among the assailants was in doubt that Tara Chand and Suman were in the house when they set the house on fire. The finding of the trial Court that it was never the intention of the Jat community mob to commit murder is plainly adverse.

258. Just because Sube Singh (PW-39) was spared during the attack by a few of the assailants did not mean that the mob did not intend to murder Tara Chand and his daughter Suman. The question was both of knowledge and intention. The argument put forth that "if the intention was to kill, the accused would have come armed with dangerous weapons" is again an unacceptable finding. They came armed in large numbers, set fire to the properties of the Balmikis by using oil cannisters and then sprinkling oil on both Tara Chand and Suman and setting them on fire.

259. On the aspect of the FSL report not showing the presence of hydrocarbons, the Court would like to refer to the decision if this Court in ***Pritam Singh v. State*** (decision dated 27th March 2009 by a Division Bench of this Court in Crl.A.405/2001), it was opined:

> "29. That kerosene oil was not detected on the clothes of the deceased by the expert at the Forensic Science Laboratory is neither here nor there.

> 30. It makes no difference, for the reason, where quantity of oil poured is less, presumably, the whole of it would be consumed by the fire and no residual traces of kerosene oil would be noted."

260. Consequently, the trial Court was clearly in error in holding that the failure of the prosecution to prove the presence of hydrocarbons of petroleum on the clothes of the deceased Suman or that the post mortem report showing that the deceased had expired due to ordinary burns and not oil burns led to the conclusion that the accused persons did not intend to commit the murder of Tara Chand and Suman.

261. The trial Court also erred in holding that there was no evidence to show that "the deceased was pushed into the burning house and doors locked from outside". The testimonies of PW-49 and CW-1 which are corroborated by PW-50 indicate the contrary. The photographs showed that the house of Tara Chand and the neighbouring house were burnt. The motorcycle of PW-49 was also completely burnt and was also identified by him.

262. On the one hand, the trial Court notices that none of the exceptions to Section 300 IPC are attracted since the provocation could not be said to have been grave and sudden and yet the trial Court proceeded to hold that the offence that led to the death of the two deceased was culpable homicide not amounting to murder within the scope of Section 304(II) IPC. In the present case, the accused set fire to the house of Tara Chand knowing very well that it was the house of a person belonging to the Balmiki community and further, that he and his daughter were both inside the house. In the opinion of this Court, the witnesses' testimonies have more than adequately proved the commission of the offence under Section 302 IPC and there was no occasion at all for the trial Court to convert the offence into one of culpable homicide not amounting to murder.

263. The trial Court adopted the specious reasoning that the stone pelting occurred in the heat of passion as a rumour had spread in the village on the morning of 21st April 2010 of A-34 having been killed by the boys of the Balmiki community. The trial Court lost sight of the sequence of events where the incident involving A-34 on the main *gali* had occurred at around 8 am whereas the stone pelting and setting of fire of the Balmiki properties happened between 11 am and 12 noon. There was more than sufficient time for the Jat community members to assemble and then attack the Balmiki houses, and it couldn't have been said to have occurred in the heat of passion or due to a grave and sudden provocation.

264. The trial Court also indulged in conjectures and surmises by stating that stacks of cow dung cakes and dry sticks were kept at various places in the Balmiki *basti* which were set afire. What is more pertinent, however, is who set those stacks on fire. This was not a case of a fire spreading quickly as a result of any accidental fire catching on to the cow dung cakes or other flammable materials which were just lying around. This was an act of deliberate targeting of the Balmiki houses by the Jat community mob and setting them on fire in a pre-planned and carefully orchestrated manner. The entire evidence, if read carefully, more than adequately demonstrates that there was a large scale conspiracy hatched by members of the Jat community to teach the Balmikis a lesson and pursuant to that conspiracy, houses of the Balmiki community were set on fire.

265. The evidence unmistakably shows that Tara Chand and his daughter Suman were set on fire and pushed inside the house in that condition in the full knowledge that they were Balmikis. The dying declaration of Tara Chand more than

adequately establishes the role of not only A-34 but also that of his associates who were identified by those present i.e. PW-49, PW-50 and CW-1. Consequently, the Court holds that the killing of Tara Chand and Suman was murder punishable under Section 302 IPC. The judgment of the trial court that it was culpable homicide punishable under Section 304 (II) IPC is hereby set aside.

Accused persons convicted by the trial Court

266. The Court shall first deal with the appeals of three convicted accused, i.e. A-34, A-38, and A-20, who were found guilty by the trial Court of having committed the offences punishable under Section 147 IPC and Sections 323/427/436/304(II) all read with Section 149 IPC. They were also convicted for the offence punishable under Section 3(2)(iv) POA Act. While A-38 has challenged his conviction by way of Crl.A.129/2012, A-20 and A-34 have approached this Court in appeal against their convictions in Crl.A.226/2012. They have also appealed against the sentences awarded to them as has been set out hereinbefore. It is pertinent to note that these accused have been sentenced under Section 3(2)(v) POA Act which would supercede the sentences to be awarded under Sections 304(II) and 436 IPC.

A-34: Rajender son of Pale

267.1 Mr. Hariharan, learned Senior Counsel, has appeared for A-34 in Crl.A.226/2012. PWs 20, 23, 25, 30, 32, 33, 36, 37, 38, 39, 40, and 42 to 50 and CW-1 have all identified him in the trial. Of these witnesses, PWs 37, 38, 39, 40, 45, 46, 49, and 50 as well as CW-1 have all attributed guilt to A-34 for the burning of the house of Tara Chand which resulted in the death of his daughter Suman and himself. Further, PWs 42, 43, 44, and 48 have all spoken of his involvement in the

physical assault on Gulaba (PW-48). Meanwhile, PWs 30, 32, and 36 have made allegations against him of indulging in arson during the rioting.

267.2 Mr. Hariharan has firstly sought to submit that A-34 was not even present in the village at the time of the rioting as he had been taken to the hospital due to the injuries suffered by him in the altercation which took place on the main *gali* on the morning of 21st April 2010. In this context, he has placed reliance on the evidence of DWs 18, 39, and 42.

267.3 Suman (DW-18) has stated that she saw A-34 in the General Hospital in Jind where she was working at some point in time between 11:30 to 11:45 am on the day of the incident. She was informed by him that he had sustained some injuries as there was a quarrel in the village with some Balmiki boys who had inflicted injuries upon him and A-36, who was apparently present at the hospital at the time as well. However, no MLC pertaining to A-34 was brought on the record.

267.4 Dipender Singh (DW-39) has been examined in order to prove the attendance register which established the presence of DW-18 at the hospital at the relevant time. However, with the MLC of A-34 not being produced, the mere presence of DW-18 at the hospital does not help the case of the accused at all.

267.5 The defence has then sought to rely on the testimony of Deepak Kumar (DW-42), who was working as the Nodal Officer for Idea Cellular, Haryana. He had brought the record pertaining to the mobile number of A-34. The record revealed that the mobile number used by A-34 ending ‘8500’ showed that at 12:28 pm, the phone was located at village Rajpura and thereafter, at Jind from 12:41 pm onwards. Up until 12:28 pm, the records actually showed that A-34 was

present at village Mirchpur. Therefore, far from establishing his plea of *alibi*, these records actually show that A-34 was present in the village at the relevant time.

267.6 Mr. Hariharan then sought to critically appraise the dying declaration of the deceased Tara Chand to show that where his pulse and blood pressure were not even recordable, it is highly improbable that any dying declaration could have been recorded. This has already been discussed hereinbefore at length and it would suffice to say that the evidence of PW-68 more than adequately proves that Tara Chand was conscious and in a position to give a statement notwithstanding that his pulse and blood pressure could not be recorded. Further, PW-55 who actually recorded the dying declaration as the JMFC could not be shaken in his cross examination. There was absolutely no need for this official to make any false deposition in order to unnecessarily implicate the accused.

267.7 Mr. Hariharan has also questioned the very applicability of the POA Act by trying to show that the fact that the Balmikis were a Scheduled Caste had not been proved. In the first place, as already pointed out, this was never earlier contended by the accused, even in the trial Court. As far as the State of Haryana is concerned, Balmiki @ Chura caste is one of those listed as a Scheduled Caste. The Court can well take judicial notice of this fact but this was never in issue before the trial Court. Even if it was raised as a contention by the accused at that stage, there would have been no difficulty at all for the prosecution to satisfy the trial Court that the victims belonged to a Scheduled Caste.

267.8 As far as the reliance on ***Asharfi v. State of U.P.*** (*supra*) is concerned, it only clarifies that after the amendment which took effect from 26th January 2016, the mere knowledge that the victim belongs to a Scheduled Caste or Scheduled

Tribe is sufficient to attract the offence punishable under Section 3(2)(v) POA Act. In the present case, the victims were attacked by the Jat community who were fully aware that the victims belonged to the Balmiki community. In fact, they intended to do so as it was revenge for the purported insult suffered by the Jat community as a result of the incidents of 19th and 21st April 2010. Therefore, in no way does this decision help the case of the accused at all.

267.9 The same holds true for the decision in ***Dinesh @ Buddha v. State of Rajasthan*** (*supra*) which states that the *sine qua non* for application of Section 3(2)(v) POA Act is that an offence must have been committed against a person who belongs to a Scheduled Caste. In the present case, in the evidence of the District Welfare Officer, Dalip Singh (DW-38), it stands proved that compensation was disbursed to the victim families only because they belonged to a Scheduled Caste and this was done under the POA Act. It is, therefore, more than adequately proved that the victims belonged to a Scheduled Caste.

267.10 Reliance was placed on the decision in ***Kartik Ram v. State of M.P. 2015 CriLJ 2958 (SJ-Chattisgarh)*** to urge that the investigation should have been done by a police officer not below the rank of DSP. In the present case, investigation has been conducted by officers of the rank of DSP. All arrests have been proved as having been effected by DSP Abhay Singh (PW-66) and DSP Tula Ram (PW-67). The same holds good for the decision in ***Masumsha Hasanasha Musalman v. State of Maharashtra*** (*supra*). The decsision in ***State of A.P. v. Viswanadula Chetti Babu*** (*supra*) is also distinguishable on facts and therefore, not helpful to the case of A-34.

267.11 There are numerous eye witnesses who have established the presence of

A-34 at the time of the incident. He has been identified by PWs 10, 13, 25, 30, 32, 33, 36, 37, 38, 39, 40, 42, 43, 44, and 45-50 and by CW-1. Therefore, there is more than sufficient evidence to establish the presence of A-34 in the village at the relevant time on the fateful day. This is irrespective of the fact that he was the person who was involved in the altercation with boys from the Balmiki community on the morning of 21st April 2010.

267.12 In this context, it must be noticed that a desperate attempt has been made by the defence to examine members of the Balmiki community themselves as DWs to show that it was the Balmiki community boys who had attacked A-34 on the morning of 21st April 2010. These witnesses include Sajjna (DW-7), Rajesh (DW-17), Ram Niwas (DW-20), Dharambir (DW-21), and Praveen (DW-22). However, there is confusion as to whether they were naming A-34 or Rajender son of Satpal as the person being attacked. They all spoke of A-25 being assaulted. However, it is of particular relevance that all of these witnesses had stayed back in village Mirchpur after the incident and it appears to this Court that they were won over by the accused persons. They have also materially contradicted their earlier statements to the police under Section 161 Cr PC, thereby rendering them unreliable and untrustworthy.

267.13 There are therefore, no grounds made out by A-34 to set aside his conviction by the trial Court. In that regard, Crl.A.226/2012, to the extent that it pertains to his conviction, deserves to be dismissed.

267.14 A-34 is also a respondent in the appeals made by the State (Crl.A.1299/2012) and the complainants (Crl.A.139/2012). It has been sought by the Appellants in those appeals, that the conviction of A-34 be enhanced to include

convictions under Sections 120B, 307, 148, 395, 397, 435, 449, 450, and 452 IPC as well as under Sections 3(1)(x) and (xv) and 3(2)(iii) POA Act. These appeals have also sought the enhancement of the conviction under Section 304(II) IPC to that under Section 302 IPC.

267.15 As regards the conviction of A-34 for the offence punishable under Section 304(II) IPC, for the reasons already discussed, this Court is of the view that the offence is not one of culpable homicide but one of murder punishable under Section 302 IPC. This is specific to the context of the killing of Tara Chand and Suman. Thus, the culpability of A-34 in their killing by burning is proved beyond reasonable doubt in light of the testimony of several PWs who name him as being involved in the burning of the house of Tara Chand.

267.16 Furthermore, it stands proved beyond reasonable doubt that in burning the house of Tara Chand and Kamala (PW-50), A-34 had rendered it unfit for inhabitation and caused its complete destruction. Also, for the reasons already discussed, the prosecution has been able to prove that A-34 was very much part of a criminal conspiracy to target and attack the Balmikis and was part of the riotous mob that went around torching the houses of the Balmikis.

267.17 In view of the above discussion, the conviction of A-34 is modified and he hereby stands convicted for the offences punishable under Section 147 IPC, Sections 323/427/452/436 all read with Section 149 IPC, Section 302 read with Section 120B IPC, and Sections 3(2)(iv) and 3(1)(xv) POA Act read with Section 120B IPC. Seeing as the offences punishable under Sections 302 and 436 IPC are punishable with imprisonment for a term of 10 years or more, Section 3(2)(v) POA Act stands attracted.

A-38: Kulwinder son of Ram Mehar

268.1 He was identified in Court by PWs 32, 36, 38, 39, 42, 43, 44, 45, 49, and 50 as well as by CW-1. PWs 32, 36, 38, 39, 42, and 45 have made general allegations against this accused of having been involved in the riotous mob and attacking and causing damage to the properties of the Balmikis. PWs 43 and 44, the sons of Gulaba (PW-48), state that he was responsible for causing damage to their father's house by arson. Most tellingly, PWs 49 and 50 as well as CW-1 have named him as one of those involved in the burning of the house of Tara Chand which resulted in two deaths.

268.2 Ms. Sumita Kapil, learned counsel appearing for A-38, has advanced more or less similar arguments to those made in the appeal of A-34. This Court has already noted that all of the aforementioned witnesses were reliable and truthful in their testimonies notwithstanding that some of them might have named and identified the accused persons for the first time in Court. With A-38 having been named by PW-50 in her statement to the police at the first instance, her identification *qua* him is acceptable. Furthermore, merely because some politicians may have visited village Mirchpur subsequently did not mean that the testimonies of the key PWs were false.

268.3 The Court also rejects the contention that simply because PW-43 was residing at the farmhouse of Ved Pal Tanwar at the time of deposing in the trial, he was unreliable and untrustworthy. While Ved Pal Tanwar's political aspirations have never been concealed, it is entirely another matter to speculate that he has instigated witnesses to speak against the accused. Furthermore, the statement of PW-43 before the CoI constituted in the present case was of no relevance and

could not be relied upon to vitiate his testimony. The Court also rejects the argument that his line of sight would have been occluded by other buildings as he was witnessing the incident of rioting on the main *gali* from the roof of a two-storied house situated one "*qilla*" away. With regards to the setting of his father's house on fire he has clearly named A-38 as the person who, along with A-22, A-23, and A-34, set his house on fire.

268.4 PW-44, the other son of Gulaba (PW-48), also speaks of A-38 sprinkling oil on the walls of their house before it was set on fire. The shop of ladies items which his wife used to run was also damaged in the fire. PW-44 withstood cross-examination and nothing emerged which discredited his testimony. The observation of the trial Court that the testimony of PW-44 was not believable as he did not take his father to the hospital and did not suffer any injuries himself is unsustainable. The MLC of Gulaba (PW-48) shows that he was taken to the hospital at 9:30 pm on 21st April 2010. This, therefore, did not disprove the presence of PW-44 at the scene of occurrence.

268.5 There were two defence witnesses who were examined in support of A-38's case. Virender (DW-6) stated that on 21st April 2010, he along with A-2 and A-38 were in their field harvesting wheat till around 4 to 4:15 pm. DW-6 is a labourer who used to work in the fields of the Jat community. He did not complain to anybody about the false arrest of A-2 or A-38. He appears to be a setup witness and is therefore, unreliable.

268.6 As far as Chander Prakash (DW-40) is concerned, he suggested that smoke was coming from one of the by-lanes where fuel in the form of *uplas* and *thasras* was lying stacked and the fire started due to these fuel dumps which thereafter

started spreading to the neighbouring houses. This by no means disproved the case of the prosecution about the involvement of A-38 during the rioting.

268.7 It was then submitted that mass MLCs were made on 30th April 2010 only after the announcement of an award of compensation by the Chief Minister of Haryana even though doctors were present at the spot on the day of the incident itself. However, it is not for the Court to speculate as to why the medical examinations of some of the injured victims were not carried out on the day of the incident itself. However, the depositions of the witnesses are cogent and convincing as regards the incident of 21st April 2010.

268.8 It is also pointed out that of the MLCs placed on the record, 18 did not show witnesses having sustained any injuries. The time gap between the date of the incident and their medical examination could explain why no injuries were found on some of these persons. In any event, this does not discredit their testimonies. Likewise, the non-recovery of the weapons which were in the form of *jellies* and *gandasis* which were ordinary agricultural implements does not weaken the case of the prosecution. Stone pelting and exchange of brickbats has been spoken to by most of the PWs and would normally result in injuries of a simple nature thus explaining the absence of injuries in the MLCs.

268.9 Consequently, this Court finds no merit in the contentions raised on behalf of this accused and in that view, Crl.A.129/2012 stands dismissed. Like in the case of A-34, the Appellants in Crl.A.139/2012 (complainants) and Crl.A.1299/2012 (State) have sought enhancement of the conviction of A-38 along similar lines.

268.10 As regards the conviction of A-38 for the offence punishable under Section

304(II) IPC, for the reasons already discussed, this Court is of the view that the offence is not one of culpable homicide but one of murder punishable under Section 302 IPC. This is specific to the context of the killing of Tara Chand and Suman. Thus, the culpability of A-38 in their killing by burning is proved beyond reasonable doubt in light of the testimony of several PWs who name him as being involved in the burning of the house of Tara Chand which resulted in his death of that of his daughter Suman.

268.11 Furthermore, it stands proved beyond reasonable doubt that in burning the house of Tara Chand and Kamala (PW-50), A-38 had rendered it unfit for inhabitation and caused its complete destruction. Also, for the reasons already discussed, the prosecution has been able to prove that A-38 was very much part of a criminal conspiracy to target and attack the Balmikis and was part of the riotous mob that went around torching the houses of the Balmikis.

268.12 In view of the above discussion, the conviction of A-38 is modified and he hereby stands convicted for the offences punishable under Section 147 IPC, Sections 323/427/452/436 all read with Section 149 IPC, Section 302 read with Section 120B IPC, and Sections 3(2)(iv) and 3(1)(xv) POA Act read with Section 120B IPC. Seeing as the offences punishable under Sections 302 and 436 IPC are punishable with imprisonment for a term of 10 years or more, Section 3(2)(v) POA Act stands attracted.

A-20: Ramphal son of Prithvi

269.1 He has been identified in the trial by PWs 10, 25, 29, 30, 38, 40, and 42 to 50 as well as by CW-1. The testimonies of PWs 40, 44, 47, and 49 as well as that of CW-1 implicate him in the burning of the house of Tara Chand. PW-29 has

named A-20 as one of the four assailants who entered his house and caused grievous injuries to him before burning his shops and house. PW-42 also names him as one of those who were sprinkling oil on the walls of the shops of Dhoop Singh (PW-29) before it was burnt. He has been identified by PW-48 as the person who, along with A-34 and A-25, had come to his house with an oil container and set it on fire. Other witnesses, such as PWs 25, 30, 43, and 45 have made general allegations against him of indulging in rioting and arson. The identification of this accused by PW-50 in the trial without having named him in her statement to the police under Section 161 Cr PC stands rejected.

269.2 Mr. Jayant Sud, learned Senior Counsel, has appeared on behalf of A-20 and has advanced largely similar arguments to those advanced on behalf of A-34 and A-38. With regard to the attack on Gulaba (PW-48), Mr. Sud submits that the version spoken to by PW-48 is not cogent and consistent with the medical evidence on the record. However, it is seen that PW-48 has, in the statements made by him under Section 161 Cr PC on 23rd April 2010 referred to the attack on him in which A-20 was also complicit. Therefore, he has been consistent on this aspect of the case and his testimony cannot be rejected as unreliable.

269.3 As regards the attack on Dhoop Singh (PW-29) who named A-20 as one of the assailants who attacked him and caused grievous injuries to him, the trial Court has already held him to be a reliable witness and the injuries suffered by him have been proved medically. He was categorical that it was A-20 who hit him with a lathi on his left arm and thereby caused a fracture. PW-29 and his son PW-42 also identified A-20 as one of those who participated in the burning of their house and shops. The evidence of PW-42 is reliable and cannot be disregarded merely

because he did not accompany Dhoop Singh (PW-29) to the hospital.

269.4 The third incident in which A-20 is implicated is the burning of the house of Tara Chand which resulted in the death of Tara Chand and his differently abled daughter Suman. His involvement in the said incident has been spoken to by PWs 40, 44, 47, and 49 as well as CW-1. All of these witnesses have been held to be reliable and their testimonies provide sufficient evidence to establish the guilt of A-20 as far as the burning of the house of Tara Chand is concerned.

269.5 It is submitted that the Supreme Court, in ***Vijay Pandurang Thakre v. State of Maharashtra (2017) 4 SCC 377***, has opined that the expression "in prosecution of the common object" postulates that the act must be one which has been done with a view to accomplish the common object attributed to the members of the unlawful assembly. This Court finds that the prosecution has adequately proved the acts done by A-20 in prosecution of the common object which was to attack the Balmiki community and cause injury and damage to their persons and properties in a bid to teach them a lesson for a perceived insult against the Jat community. Reliance is sought to be made on the decision in ***Dilaver Hussain v. State of Gujarat (1991) 1 SCC 253*** but this Court does not find it to be helpful to the case of A-20.

269.6 Consequently, the Court rejects the arguments made on behalf of A-20 and in that view, Crl.A.226/2012, insofar as it pertains to him, stands dismissed. Like in the cases of A-34 and A-38, the Appellants in Crl.A.139/2012 (complainants) and Crl.A.1299/2012 (State) have sought enhancement of the conviction of A-20 along similar lines.

269.7 As regards the conviction of A-20 for the offence punishable under Section 304(II) IPC, for the reasons already discussed, this Court is of the view that the offence is not one of culpable homicide but one of murder punishable under Section 302 IPC. This is specific to the context of the killing of Tara Chand and Suman. Thus, the culpability of A-20 in their killing by burning is proved beyond reasonable doubt in light of the testimony of several PWs who name him as being involved in the burning of the house of Tara Chand which resulted in his death of that of his daughter Suman.

269.8 Furthermore, it stands proved beyond reasonable doubt that in burning the houses of Tara Chand, Kamala (PW-50), and Dhoop Singh (PW-29), A-20 had rendered them unfit for inhabitation and caused their complete destruction. His guilt in causing grievous injuries to PW-29 also stands established. Also, for the reasons already discussed, the prosecution has been able to prove that A-20 was very much part of a criminal conspiracy to target and attack the Balmikis and was part of the riotous mob that went around torching the houses of the Balmikis.

269.9 In view of the above discussion, the conviction of A-20 is modified and he hereby stands convicted for the offences punishable under Section 147 IPC, Sections 325/427/452/436 all read with Section 149 IPC, Section 302 read with Section 120B IPC, and Sections 3(2)(iv) and 3(1)(xv) POA Act read with Section 120B IPC. Seeing as the offences punishable under Sections 302 and 436 IPC are punishable with imprisonment for a term of 10 years or more, Section 3(2)(v) POA Act stands attracted.

270. The Court shall now proceed to discuss the convictions of A-3, A-25, and A-13, all three of whom, along with A-42 and A-94 (both since deceased), were

convicted by the trial Court for the offences punishable under Section 147 IPC and Sections 323/427/435 all read with Section 149 IPC. They were also convicted for the offence punishable under Section 3(2)(iii) POA Act which supercedes the conviction under Section 435 IPC. While A-3 and A-13 have preferred Crl.A.210/2012, A-25 has preferred Crl.A.190/2012. Crl.A.210/2012 stands abated insofar as it pertains to the challenge against the conviction of A-94.

A-3: Karambir son of Tara Chand

271.1 He has been represented by learned counsel Mr. M.N. Dudeja. The relevant witnesses who have spoken about his involvement are PWs 33, 39, 43, 44, 45, 49, and 50. PWs 39, 44, and 45 have all identified A-3 as being one of the rioters who set their houses on fire. The remaining witnesses have spoken about A-3 indulging in stone pelting and attacking Balmikis with lathis whilst being a member of an unlawful assembly.

271.2 For reasons already explained hereinbefore, this Court rejects all attempts made by Mr. Dudeja to vitiate the testimonies of the abovementioned witnesses on the ground that some of them have identified the accused for the first time in the trial with no mention of his name being made by them to the police at the first instance. Further, the testimony of PW-39 is not liable to rejection merely because he had undergone eye surgery one month prior to the incident. PW-45 whose house was burnt by this accused has named him in his statement to the police as well as identified him during the trial, making his testimony *qua* this accused reliable. The Court has also already laid down its reasoning in rejecting the contention that testimonies such as that of PW-43 ought to be rejected as the witnesses were permitted by the trial Court to refresh their memory.

271.3 In that view of the matter, Crl.A.210/2012, insofar as it challenges the conviction of A-3, stands dismissed. On the other hand, the Appellants in Crl.A.139/2012 (complainants) and Crl.A.1299/2012 (State) have sought enhancement of the sentence awarded to A-3 to include convictions under Sections 120B, 302, 307, 148, 395, 397, 436, 449, 450, 452 IPC as well as under Sections 3(1)(x) and (xv) and 3(2)(iv) and (v) POA Act.

271.4 With PWs 49 and 50 both naming him in their respective statements to the police at the first instance under Section 161 Cr PC as well as identifying him in Court as one of the members of the group of assailants who attacked the house of Tara Chand, it stands established that he is guilty of having burnt the dwelling home of a Balmiki in such a manner that it was completely destroyed and uninhabitable.

271.5 In view of the above discussion, the conviction of A-3 is modified and he hereby stands convicted for the offences punishable under Section 147 IPC, Sections 323/427/436 all read with Section 149 IPC, and Sections 3(2)(iv) and 3(1)(xv) POA Act read with Section 120B. Seeing as the offence punishable under Section 436 IPC is punishable with imprisonment for a term of 10 years or more, Section 3(2)(v) POA Act stands attracted.

A-25: Karampal son of Satbir

272.1 He has been represented by learned counsel Mr. Jitendra Sethi and was identified by PWs 36, 42, 44, 45, 48, 49, and 50 and CW-1, all of whom the Court has already found to be reliable notwithstanding that some of them may have identified him for the first time in the trial with no mention made by them of his

name to the police at the first instance. PWs 36, 42, and 45 have identified him as one of the rioters indulging in stone pelting. PWs 44 and 48 have accused him of having burnt their houses. PW-49 names him as one of those indulging in arson and CW-1 specifically alleges that he was one of those dancing naked on the main *gali*.

272.2 PW-50 failed to mention the name of this accused in her statement to the police at the first instance and therefore, her dock identification of him is rejected. Nevertheless, several witnesses have spoken to his participating in the rioting and arson that took place on 21st April 2010 in cogent and reliable manner. Thus, Crl.A.190/2012 preferred by him is dismissed. Like with A-3, the Appellants in Crl.A.139/2012 (complainants) and Crl.A.1299/2012 (State) have sought enhancement of the conviction awarded to A-25 along similar lines.

272.3 On the question of enhancement of this accused's conviction, the Court is of the view that while his participation in the burning of properties of the Balmikis as part of the riotous mob which came prepared to attack stands proved beyond reasonable doubt, no evidence emerges from the record which proves his direct involvement in the destruction of the houses of Tara Chand, Kamala (PW-50), and Dhoop Singh (PW-29) so as to make them uninhabitable. Furthermore, nothing emerges which suggests his participation in the killing of Tara Chand and Suman and thus, he has rightly been acquitted of the offence punishable under Section 302 IPC.

272.4 In view of the above discussion, the conviction of A-25 is modified and he hereby stands convicted for the offences punishable under Section 147 IPC, Sections 323/427/435 all read with Section 149 IPC, and Sections 3(2)(iii) and

3(1)(xv) POA Act read with Section 120B. It is further noted that the conviction under Section 3(2)(iii) POA Act shall supercede the conviction under Section 435 IPC.

A-13: Dharambir son of Mai Chand

273.1 He has been represented by learned counsel Mr. Ajay Verma and was identified by PWs 36, 37, 38, 40, 42, 44, 48, and 50. All of these witnesses have been held by this Court to be reliable and the contention that some of them have identified him for the first time during the trial and are thus not reliable is rejected. He is implicated in stone pelting, damaging property, and attacking Balmikis by PWs 36, 37, 38, and 44. Meanwhile PWs 40, 42, and 48 have accused him of indulging in arson. With her having failed to name this accused to the police in her statement at the first instance, the identification by PW-50 is rejected.

273.2 He has examined Ramphal (DW-31) in leading defence evidence who has stated that in the years 2007 and 2009, A-13 was the highest bidder for the offering rights at the Mata Phoolan Devi temple. How this particular piece of evidence could help the case of the accused is unclear. Keeping in view the consistent and corroborated testimonies which are available on the record, this Court is satisfied that his guilt has been established beyond reasonable doubt. In that view of the matter, Crl.A.210/2012 is dismissed insofar as it challenges the conviction of A-13. The Appellants in Crl.A.139/2012 (complainants) and Crl.A.1299/2012 (State) have sought enhancement of the conviction awarded to A-13.

273.3 On the question of enhancement of this accused's conviction, the Court is of the view that while his participation in the burning of properties of the Balmikis as part of the riotous mob which came prepared to attack stands proved beyond

reasonable doubt, no evidence emerges from the record which proves his direct involvement in the destruction of the houses of Tara Chand, Kamala (PW-50), and Dhoop Singh (PW-29) so as to make them uninhabitable. Furthermore, nothing emerges which suggests his participation in the killing of Tara Chand and Suman and thus, he has rightly been acquitted of the offence punishable under Section 302 IPC.

273.4 In view of the above discussion, the conviction of A-13 is modified and he hereby stands convicted for the offences punishable under Section 147 IPC, Sections 323/427/435 all read with Section 149 IPC, and Sections 3(2)(iii) and 3(1)(xv) POA Act read with Section 120B. It is further noted that the conviction under Section 3(2)(iii) POA Act shall supercede the conviction under Section 435 IPC.

274. The Court now proceeds to consider the cases of A-27, A-64, A-90, A-65, A-41, and A-39, all of whom, along with A-23 (since deceased), were convicted for the offences punishable under Section 147 IPC and Sections 323 and 427 read with Section 149 IPC. They were sentenced to the period of imprisonment already undergone and were placed under probation for a period of one year in terms of the Probation of Offenders Act 1958 upon their furnishing bonds in the sum of Rs.10,000/- and surety of the like amount. In case of any default or repetition of offence, they were sentenced to undergo SI for one year. None of these convicted accused have preferred appeals. However, they have been issued notices in Crl.A.139/2012 (complainants) and Crl.A.1299/2012 (State) by both of which it has been prayed that their convictions be enhanced. A-23, who was issued notice, is since deceased and thus, the appeals *qua* him stand abated.

A-27: Sumit son of Satyawan

275.1 He has been represented by learned counsel Mr. Ajay Verma and was identified by PWs 42, 45 and 49, all of whom are reliable. PW-42 has identified him as being part of the Jat community mob and has specifically stated that he was dancing naked after burning the houses of the Balmikis. Meanwhile, PW-45 has stated that the accused came to his house and had set it on fire. He also mentions A-27 burning the motorcycle belonging to his brother-in-law. PW-49 also mentions him indulging in arson and rioting.

275.2 In view of the above discussion, the conviction of A-27 is modified and he hereby stands convicted for the offences punishable under Section 147 IPC, Sections 323/427/435 all read with Section 149 IPC, and Sections 3(2)(iii) and 3(1)(xv) POA Act read with Section 120B. It is further noted that the conviction under Section 3(2)(iii) POA Act shall supercede the conviction under Section 435 IPC.

A-64: Pradeep son of Jaibir

276.1 He has been represented by learned counsel Mr. Sudhershan Rajan and was identified by PWs 36, 42, and 49. From a cumulative reading of their testimonies, it emerges that A-64 was a member of the mob and was seen entering the houses of the Balmikis and damaging household properties. He is also attributed with having sprinkled oil on the walls of the shop of PW-29 and setting it on fire. PW-49 also accuses him of participating in arson and rioting.

276.2 In view of the above discussion, the conviction of A-64 is modified and he hereby stands convicted for the offences punishable under Section 147 IPC,

Sections 323/427/436 all read with Section 149 IPC, and Sections 3(2)(iv) and 3(1)(xv) POA Act read with Section 120B. Seeing as the offence punishable under Section 436 IPC is punishable with imprisonment for a term of 10 years or more, Section 3(2)(v) POA Act stands attracted.

A-90: Rajpal son of Sheo Chand

277.1 He has been represented by learned counsel Mr. M.N. Dudeja and was identified by PWs 42, 43, and 50 as being part of the rioting mob. PW-42 has spoken of him being one of those who sprinkled oil on the walls of the shop of PW-29 and set it on fire. PW-43 identified him by name and by pointing out as the person who broke down the door of his house and set it on fire. As regards the identification of this accused by PW-50, this Court finds that it unreliable for the reason that his name does not find mention in the statement by her at the first instance to the police. Nevertheless, there being two other witnesses to the offences perpetrated by A-90, this Court is satisfied as to his guilt.

277.2 In view of the above discussion, the conviction of A-90 is modified and he hereby stands convicted for the offences punishable under Section 147 IPC, Sections 323/427/436 all read with Section 149 IPC, and Sections 3(2)(iv) and 3(1)(xv) POA Act read with Section 120B. Seeing as the offence punishable under Section 436 IPC is punishable with imprisonment for a term of 10 years or more, Section 3(2)(v) POA Act stands attracted.

A-65: Pradeep son of Suresh

278.1 Mr. Anupam Sharma, learned counsel appearing on his behalf, has sought to discredit the testimonies of the witnesses, viz. PWs 42, 45, 49, and 50, who have identified A-65 as being a member of the mob which attacked the Balmiki *basti*.

PW-42 has deposed to A-65 being part of the group of accused who were sprinkling oil on the walls of the shop of PW-29 before setting it on fire. PW-45 as well has spoken to him being one of those who were indulging in stone pelting and arson in the Balmiki *basti*. While PW-49 has pointed him out as one of those present at the spot at the time of rioting, the identification by PW-50 is rejected for the reason that she did not name him in her statement to the police made at the first instance.

278.2 Learned counsel Mr. Sharma has averred that no specific role has been attributed to A-65 by any of the witnesses who identified him. Further, he submits that no incriminating recoveries were made from A-65 and that the pictures of the burnt houses were not shown to the victims at the time of their deposing in the trial. However, this Court does not believe that any of these submissions would cancel out the clear and corroborated evidence that appears on the record implicating the accused in the ghastly violence which occurred in the village on 21st April 2010.

278.3 In view of the above discussion, the conviction of A-65 is modified and he hereby stands convicted for the offences punishable under Section 147 IPC, Sections 323/427/436 all read with Section 149 IPC, and Sections 3(2)(iv) and 3(1)(xv) POA Act read with Section 120B. Seeing as the offence punishable under Section 436 IPC is punishable with imprisonment for a term of 10 years or more, Section 3(2)(v) POA Act stands attracted.

A-41: Sunil son of Dayanand

279.1 Mr. M.L. Yadav, learned counsel appearing on his behalf, submits that

although he has been identified in the trial by PWs 42, 48, 49, and 50, dock identifications would be impermissible especially considering no TIP was conducted. This Court has already recorded its observations regarding the non-conduct of TIP in this case and has arrived at the conclusion that this oversight would not obviate the testimonies of these reliable and trustworthy witnesses whose presence at the time of the incident has been established.

279.2 At the outset, it is to be noted that PW-50 has not mentioned the name of this accused in her statement to the police at the first instance and in that circumstance, her dock identification of A-41 is rejected. PW-48 states that this accused was one of those indulging in arson, stone throwing, and rioting while PW-42 also identified him as a member of the rioting mob. PW-49 too has stated that A-41 was one of the assailants who were indulging in rioting and arson.

279.3 In view of the above discussion, the conviction of A-41 is modified and he hereby stands convicted for the offences punishable under Section 147 IPC, Sections 323/427/435 all read with Section 149 IPC, and Sections 3(2)(iii) and 3(1)(xv) POA Act read with Section 120B. It is further noted that the conviction under Section 3(2)(iii) POA Act shall supercede the conviction under Section 435 IPC.

A-39: Monu son of Suresh

280.1 Represented by learned counsel Mr. Jitender Sethi, this accused has been identified by PWs 38, 44, 49, and 50. PWs 38 and 44 have identified this accused as one who was indulging in stone pelting and arson and had *jellies* in his hand. PW-49 has identified him as part of the group of accused who were indulging in rioting and arson. The identification of this accused by PW-50 is liable to be

rejected for the reason that he was not named by her in her statement to the police under Section 161 Cr PC.

280.2 In view of the above discussion, the conviction of A-39 is modified and he hereby stands convicted for the offences punishable under Section 147 IPC, Sections 323/427/435 all read with Section 149 IPC, and Sections 3(2)(iii) and 3(1)(xv) POA Act read with Section 120B. It is further noted that the conviction under Section 3(2)(iii) POA Act shall supercede the conviction under Section 435 IPC.

A-58: Jasbir @ Lillu son of Raja

281.1 The State, by way of Crl.A.1472/2013, has sought enhancement of the conviction of A-58 who, by the judgment dated 6th October 2012 in SC No.1238A/2012, was acquitted of all charges except that under Section 174A IPC to which he pleaded guilty. Consequently, he was sentenced to six months RI along with fine of Rs.2,000/- and in default of payment of fine, to undergo further SI for a period of 15 days.

281.2 He has been represented by learned counsel Mr. R.P. Luthra and was identified by PWs 36, 38, 42, and 50. At the outset, the identification of this accused by PW-50 is liable to be discarded as his name does not find mention in her original statement to the police. PW-36 names A-58 as one of those who was "having a *lathi* in his hand and was first indulging in stone pelting and then was roaming around in the *galis* with *lathi* in his hand". PW-38 has made a general allegation against A-58 of being involved in stone pelting, assault, looting, and arson. Meanwhile, PW-42 names him as one of those who broke into the shop of PW-29 and caused damaged to the properties therein.

281.3 In view of the above discussion, the conviction of A-39 is modified and he hereby stands convicted for the offences punishable under Section 147 IPC, Sections 323/427 both read with Section 149 IPC, and Section 3(1)(xv) POA Act read with Section 120B.

Accused persons acquitted by the trial Court

282. Having dealt with the convictions of those who have been convicted by the trial Court, the Court now proceeds to consider the case of those acquitted accused who were arrayed as Respondents in Crl.A.139/2012 (complainants), Crl.A.1472/2013 (State), and Crl.A.1299/2012 (State). In all, notices were issued to 42 acquitted accused of which A-17 is since deceased and therefore, the appeals *qua* him stand abated.

283. Before proceeding to discuss the individual cases of the acquitted Respondents, it would be necessary for this Court to examine its powers in reversing a judgment of acquittal by the trial Court. In this context, the powers of the appellate Court have been clearly explained by the Supreme Court in ***Bhagwan Singh v. State of Uttar Pradesh (2003) 3 SCC 21*** as under:

> "7. We do not agree with the submissions of the learned counsel for the appellants that under Section 378 of the Code of Criminal Procedure the High Court could not disturb the finding of facts of the trial court even if it found that the view taken by the trial court was not proper. On the basis of the pronouncements of this Court, the settled position of law regarding the powers of the High Court in an appeal against an order of acquittal is that the Court has full powers to review the evidence upon which an order of acquittal is based and generally it will not interfere with the order of acquittal because by passing an order of acquittal the presumption of innocence in favour of the accused is reinforced. The golden thread which runs through the

web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. Such is not a jurisdiction limitation on the appellate court but a Judge made guidelines for circumspection. The paramount consideration of the court is to ensure that miscarriage of justice is avoided. A miscarriage of justice which may arise from the acquittal of guilty is no less than from the conviction of an innocent. In a case where the trial court has taken a view ignoring the admissible evidence, a duty is cast upon the High Court to re-appreciate the evidence in acquittal appeal for the purposes of ascertaining as to whether all or any of the accused has committed any offence or not. Probable view taken by the trial court which may not be disturbed in the appeal is such a view which is based upon legal and admissible evidence."

284. In ***Sidhartha Vashisht @ Manu Sharma v. State (NCT of Delhi)*** (*supra*), the Supreme Court observed as under:

"... The appellate court has all the necessary powers to re-evaluate the evidence let in before the trial court as well as the conclusions reached. It has a duty to specify the compelling and substantial reasons in case it reverses the order of acquittal passed by the trial court. In the case on hand, the High Court by adhering to all the ingredients and by giving cogent and adequate reasons reversed the order of acquittal."

285. Further, in ***Khurshid Ahmed v. State of J&K*** (*supra*), the Supreme Court held:

"33. The power of the appellate Court in an appeal against acquittal is the same as that of an appeal against conviction. But, in an appeal against acquittal, the Court has to bear in mind that the presumption of innocence is in favour of the accused and it is strengthened by the order of acquittal. At the same time, appellate Court will not interfere with the order of acquittal mainly because two views are possible, but only when the High Court feels that the appreciation of evidence is based on erroneous considerations and when there is manifest

illegality in the conclusion arrived at by the trial Court. In the present case, there was manifest irregularity in the appreciation of evidence by the trial Court. The High Court based on sound principles of criminal jurisprudence, has interfered with the judgment of acquittal passed by the trial Court and convicted the accused as the prosecution was successful in proving the guilt of the accused beyond reasonable doubt."

286. Thus, the position in law which emerges from the decisions of the Supreme Court cited hereinabove is that where there has been a manifest irregularity in the appreciation of evidence by the trial Court, the appellate Court might interfere with the judgment of acquittal by the trial Court and instead convict the accused if it is satisfied that the prosecution has been successful in establishing their guilt. In the present case, as has already been discussed at great length hereinbefore, the trial Court has gravely erred in discarding the testimonies of a majority of the key PWs who were in fact reliable and trustworthy. Thus, this Court has taken it upon itself to re-appreciate this evidence so as to prevent the miscarriage of justice which would result from the wrongful acquittals of guilty individuals.

287. In that context, the Court now proceeds to discuss the individual cases of the acquitted accused. For the sake of convenience, the Court has chosen to deal with those accused represented by a common counsel together.

Respondents represented by Mr. M.N. Dudeja

288. The Court shall first deal with the submissions made by learned counsel Mr. M.N. Dudeja who has appeared for the acquitted accused A-22, A-77, and A-78. His first submission pertains to what he argues is a lack of reliable witnesses and the absence of clear and cogent evidence which would point to the guilt of the accused beyond reasonable doubt. He argues that the testimonies of the eye

witnesses in the present case are riddled with falsehoods and cites the decision of the Supreme Court in ***State of U.P. v. Shanker AIR 1981 SC 897*** in support of his submission that testimonies in which trust and falsehood are inextricably intertwined should be rejected. Further, he states that major improvements have been made by witnesses while deposing in the trial and that no specific evidence emerges which attributes a specific role in the violence to any of the accused. He also argues the dock identification of the accused for the first time by a number of witnesses is liable to be rejected.

289. All these submissions on the aspect of the reliability of the eye witness testimonies on the record in the present case have been dealt with by this Court hereinbefore. It would suffice to say at this point that this Court is of the opinion that the key eye witnesses examined by the prosecution appear reliable and trustworthy and their testimonies reveal in sufficient detail the extent of the violence perpetrated by the Jat community mob on 21st April 2010. In that view, this Court rejects these submissions of Mr. Dudeja on the aspect of the reliability of eye witnesses. It is to be noted, however, that this Court, as has been noted hereinbefore, is in concurrence with his submission regarding the requirement of identification by at least two eye witnesses in cases involving allegations of membership of an unlawful assembly.

290. Mr. Dudeja then proceeds to argue that the trial Court's decision to permit the asking of leading questions during the examination of key PWs was bad in law and obviated the right of the accused to a fair trial. He also states that there can only one set of rules and standards when it comes to trials in criminal cases unless the statute provides for anything to be specifically applicable to a particular case or

class of cases. Both of these arguments have already been dealt with earlier in this judgment and are liable to be rejected.

291. He then argues that the FSL reports do not corroborate the claims of oil being sprinkled on the houses of the Balmikis before they were burnt. However, once again, this Court is not convinced by this argument for reasons already recorded hereinbefore. His submissions regarding the true genesis of the violence on 21st April 2010 and the purported suppression of the incident which occurred on that morning do not resonate with this Court and lacks any sort of evidentiary basis in view of this Court's discussion of the alternate theory put forth by the defence hereinbefore.

292. In the context of the above discussion, the Court now proceeds to consider the individual cases of the acquitted accused represented by Mr. Dudeja.

A-22: Pradeep son of Balwan

293.1 He has been identified as being present at the time of rioting by PWs 43, 44, and 50. He is named by PW-43 as one of those who sprinkled kerosene on his house and set it on fire. Similarly, PW-44 has also named him as being one of the assailants who set his house on fire. PW-50 has named this accused in her statement to the police at the first instance and has also identified him in Court as one of the assailants present at the spot at the relevant time who were indulging in rioting, looting, and arson.

293.2 The submission of Mr. Dudeja, in terms of the decision in ***Binay Kumar Singh v. State of Bihar (1997) 1 SCC 283***, that the conviction for an accusation of involvement in an unlawful assembly should be based the testimonies of at least

two reliable witnesses therefore stands satisfied as in the present case, three reliable witnesses have deposed to his presence at the spot and have even attributed specific actions to him in the burning of properties belonging to the Balmiki community.

293.4 In view of the above discussion, A-22 hereby stands convicted for the offences punishable under Section 147 IPC, Sections 323/427/435 all read with Section 149 IPC, and Sections 3(2)(iii) and 3(1)(xv) POA Act read with Section 120B. It is further noted that the conviction under Section 3(2)(iii) POA Act shall supercede the conviction under Section 435 IPC.

A-77: Sanjay @ Handa son of Dayanand

294.1 He has been identified by PW-29 as one of the assailants who entered his home and dealt blows to this leg with a *danda* before going on to set fire to his shops which eventually spread to his house. PW-36 too has spoken of this accused entering the house of PW-29 and causing injuries to him before setting his house on fire. PW-42, the son of PW-29, has also spoken of A-77 sprinkling oil on the walls of his father's shop and setting it on fire. Furthermore, PW-45 has identified him as being one of the boys indulging in stone pelting, arson, and burning of houses in the Balmiki *basti*.

294.2 This Court has already recorded its observation that the testimony of a witness who is reliable and cogent cannot be discarded simply because the accused was not mentioned in the statements made by these witnesses under Section 161 Cr PC at the first instance. In fact, PW-42 has named this accused in his original statement to the police. Furthermore, the Court notes that multiple witnesses have spoken of their statements being incorrectly recorded by the police.

294.3 In view of the above discussion, A-77 hereby stands convicted for the offences punishable under Section 147 IPC, Sections 325/427/452/436 all read with Section 149 IPC, and Sections 3(2)(iv) and 3(1)(xv) POA Act read with Section 120B. Seeing as the offence punishable under Section 436 IPC is punishable with imprisonment for a term of 10 years or more, Section 3(2)(v) POA Act stands attracted.

A-78: Satyawan @ Satta Singh son of Karan Singh

295.1 He has been identified by at least four witnesses, viz. PWs 25, 36, 37, and 45. PW-36 specifically alleges that he was indulging in stone pelting and entering the houses of the Balmikis and destroying household articles. PW-37 and PW-45 have spoken to this accused indulging in arson and the specific act of burning the motorcycle of Sunil son of Brijbhan has been attributed to him.

295.2 Mr. Dudeja has referred to the testimony of Pasha (DW-15) who testified that when he went to collect beehives from the fields on 21st April 2010, at around 12 noon, he saw A-78 there harvesting his crop. However, it appears to this Court that such testimony has been made by a witness whose livelihood is dependant upon the Jat community which is dominant in village Mirchpur. His testimony does not appear reliable and trustworthy and does little to dislodge the overwhelming evidence available on the record pointing to the presence of the accused at the relevant time.

295.3 In view of the above discussion, A-78 hereby stands convicted for the offences punishable under Section 147 IPC, Sections 323/427/435 all read with Section 149 IPC, and Sections 3(2)(iii) and 3(1)(xv) POA Act read with

Section 120B. It is further noted that the conviction under Section 3(2)(iii) POA Act shall supercede the conviction under Section 435 IPC.

Respondents represented by Mr. Ajay Verma

296. The Court now proceeds to discuss the individual cases of those acquitted accused represented by learned counsel Mr. Ajay Verma, viz. A-89, A-83, A-43, A-76, A-15, and A-60.

A-89: Jokhar @ Joginder son of Inder Singh

297.1 He was identified in the trial by PWs 42, 49, and 50. At the outset, it is to be noted that the dock identification of this accused by PW-50 is liable to be rejected for the reason that he was not named by her in the statement to the police at the first instance. PW-42 has named him as one of the group of assailants who came to the shop of PW-29 and indulged in "*tor phor*" and caused damage to their property. PW-49 has also named him as one of the assailants present at the spot at the relevant time attacking the Balmikis.

297.2 In view of the above discussion, A-89 hereby stands convicted for the offences punishable under Section 147 IPC, Sections 323/427 both read with Section 149 IPC, and Section 3(1)(xv) POA Act read with Section 120B.

A-83: Sonu @ Monu son of Ramesh

298.1 Like A-89, he too has been identified in the trial by PWs 42, 49, and 50. He was named by PW-42 as one of those having a *danda* in his hand and hitting persons from the Balmiki community and also indulging in "*tor phor*" and causing damage to the properties of the Balmikis. PW-49 has identified him as one of those present at the time of the rioting. The identification made by PW-50 is liable to be

rejected on the ground that she did not name this accused in her initial statement to the police under Section 161 Cr PC.

298.2 Pasha (DW-15) has deposed that in the course of collecting beehives from the fields on the morning of 21st April 2010, he went to the field owned by the family of A-83 and saw him harvesting wheat there. However, as has been noted with respect to A-78, this witness appears to the Court to be one who is deposing out of fear of repercussions from the dominant Jat community in the village upon whom his livelihood depends. His testimony does not appear reliable and trustworthy and does little to dislodge the overwhelming evidence available on the record pointing to the presence of the accused at the relevant time.

298.3 In view of the above discussion, A-83 hereby stands convicted for the offences punishable under Section 147 IPC, Sections 323/427 both read with Section 149 IPC, and Section 3(1)(xv) POA Act read with Section 120B.

Rajesh son of Dhupa (A-43), Sanjay @ Sandeep son of Amar Lal (A-76), Jitender son of Satbir (A-53), Kuldeep @ Midda son of Balbir (A-15), and Naseeb son of Prem Singh (A-60)

299. All of these acquitted accused have been identified by PW-50 for the first time in Court with no mention of their names being made by her in the statement made to the police at the first instance. As has already been discussed, this Court has chosen not to rely on such dock identification by PW-50. Apart from PW-50, each of these accused have been identified in Court by only one other reliable witness, i.e. PW-40 in the case of A-43, PW-48 in the case of A-60, and PW-42 in the cases of A-76, A-53, and A-15. In view of the principle laid down in ***Masalti v. State of U.P.*** (*supra*), this Court finds there to be insufficient material on the

record to convict any of these accused persons. In that view, the acquittals of these accused persons are upheld and the appeals by the complainants and the State are dismissed insofar as they pertain to them.

Respondents represented by Mr. Sudarshan Rajan

300. The Court next deals with the submissions made by learned counsel Mr. Sudarshan Rajan who has appeared on behalf of A-1, A-29, A-79, A-18, A-5, A-52, A-66, and A-63. At the outset, he submits that the POA Act would not be applicable to the present case as the offences were not committed on the ground that the victims belonged to a Scheduled Caste. He has placed reliance on the decisions in ***Dinesh @ Buddha v. State of Rajasthan*** (*supra*) and ***Masumsha Hasanasha Musalman v. State of Maharashtra*** (*supra*) in this regard. He further submits that as per Section 3(2)(v) POA Act as it stood prior to amendment, it was not enough to show mere knowledge on the part of the accused of the victims' membership of a Scheduled Caste but in fact, the prosecution had to fulfil its burden of showing that the offences were committed against them on the ground that they belonged to a Scheduled Caste. Reliance is placed upon the decision in ***Asharfi v. State of U.P.*** (*supra*) in that regard. This Court has already discussed these submissions at length and for reasons already stated hereinbefore, is not persuaded by them.

301. A third limb of his submission is that it was necessary to examine whether the accused would have reacted in the same manner in case the motive for such incident existed against any other community and not necessarily persons belonging to a Scheduled Caste. Here it is submitted that since the trigger for the incident on 21st April 2010 was a rumour that A-34 had been either kidnapped or

killed, the reaction of the Jat community would have been no different even if the persons responsible belonged to a community other than a Scheduled Caste.

302. However, this submission conveniently overlooks the incident of 19th April 2010 and the conspiracy hatched on 20th April 2010 by the members of the Jat community in village Mirchpur with a view to specifically targeting members of the Balmiki community. The prosecution has been able to demonstrate that the acts of arson, rioting and looting that took place on 21st April 2010 were by the members of the Jat community mob and were specifically targeted at the members of the Balmiki community. Therefore, there is no scope for accepting the above submission that the members of the Jat community would have reacted no differently to the rumour that A-34 had been abducted/killed even if such abduction/killing was done by members of a community other than a Scheduled Caste. In the considered view of the Court, this was undoubtedly an incident of caste based violence and has been proved to be as such by the prosecution.

303. The next submission of Mr. Rajan was that this was a case of faulty investigation. He referred to the order sheet of the trial Court dated 7th March 2011 and submitted that there had been false implication of persons who were not even present at the spot. In particular he referred to the submissions of Rakesh son of Amar Lal (A-55) and Manbir son of Zile Singh (A-59). According to him, the State was supporting the complainants. He further points out that the State itself had recommended a CBI investigation in the matter as is recorded in the order dated 20th January 2011 and this was opposed by the complainants themselves.

304. The Court again does not find anything significant in the above submissions. The fact is that there was no reference of the case to the CBI and the trial

proceeded from the stage of framing of charges before the trial Court in Delhi pursuant to the orders of the Supreme Court. The trial Court has in fact recorded its views on the faulty investigation and these have been adverted to earlier. The Court has also dealt with the submissions that many of the alleged victims had not suffered injuries and only gave statements to the police after the Chief Minister announced compensation pursuant to his visit to Mirchpur on 27th April 2010.

305. The Court would not like to discuss this aspect further as it has already been dealt with earlier. Suffice to note that a large number of victim families in fact left Mirchpur and moved into the farmhouse of Ved Pal Tanwar. They have continued to remain there even eight years after the incident. The atmosphere of fear created by the members of the dominant Jat community was evidently so severe that the confidence of the members of the Balmiki community about their safety and security in Mirchpur is yet to be restored. It is too cynical to characterise the statements given by many of the victims as having been motivated only by the expectation of the compensation announced by the government. Many of the victims lost their properties, were injured, and had their houses burnt. The trauma and shock of the incident has left such deep scars that many of them could not gather the courage to speak to the police for many days thereafter. It is in this context that the Court is disinclined to accept any of these submissions regarding alleged false implication of the accused by the victims.

306. The Court also does not consider it necessary to deal with the submissions of Mr. Rajan that if this was indeed a case of faulty investigation, the complainants have not exercised all of the remedies available to them in accordance with law. As has been shown by this Court, the evidence gathered by the prosecution was

sufficient to bring home the guilt of of the relevant accused. The considered view of the Court is that the trial Court has wrongly rejected the evidence of many of the PWs as being unreliable and this too has already been discussed earlier.

307. The submission of Mr. Rajan that there is no evidence to show that the victims belonged to a Scheduled Caste has already been dealt with and rejected by this Court. It has been noted earlier that the Balmiki caste is listed under Entry No.2 of Part V of the Schedule to the Constitution (Scheduled Castes) Order, 1950 as amended by the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976. Furthermore, his submission regarding the requisite number of reliable eye witnesses to uphold a conviction for membership of an unlawful assembly has also already been dealt with.

308. As far as the quality of the evidence is concerned, the Court is satisfied that there is sufficient evidence to show the involvement of certain accused persons in the incident of 21st April 2010. The Court also rejects the submission that specific roles have not been attributed to each of the accused. The Court has already made reference to the observations in ***Inder Singh v. State of Rajasthan*** (*supra*) and ***State of U.P. v. Dan Singh*** (*supra*) wherein the Supreme Court has explained the law that it is not necessary that the prosecution should specifically attribute a role to each of the members of an unlawful assembly as long as it is able to show that they were indeed members of such unlawful assembly. The Court is of the view that the said test stands fully satisfied in the present case with regard to some of the accused represented by Mr. Rajan.

309. Mr. Rajan placed reliance on the decision of the Rajasthan High Court in ***Mani Ram v. State of Rajasthan 1994 Cri LJ 3770*** which in turn has relied on a

decision of the Supreme Court in ***Ram Narain Singh v. State of Punjab (1975) 4 SCC 497***. The ratio of the last mentioned judgment of the Supreme Court is to the effect that if the deposition of the PWs is totally inconsistent with the medical evidence and the forensic evidence, it would discredit the entire prosecution case. It would appear from a reading of that judgment that the Supreme Court disbelieved the ocular evidence since it was wholly inconsistent with the medical evidence on the record. However, in the present case the ocular testimony is credible and trustworthy notwithstanding any immaterial inconsistencies with the medical evidence on the record. In this regard, it would be wise to heed the observation of the Supreme Court in ***Krishnan v. State (2003) 7 SCC 56*** that "it would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses to exclude the eye-witnesses' account which had to be tested independently and not treated as the 'variable' keeping the medical evidence as the constant'". Another aspect to be kept in mind is the considerable efflux of time between the date of the incident and the dates on which the medical examinations of many of the witnesses were conducted. Thus, Mr. Rajan's submission in this regard also fails.

310. The Court has already dealt with the objection of the defence about reliability of the PWs who have identified the accused for the first time in Court. As already explained earlier, as long as the eye witness account is found to be credible and trustworthy, it cannot be rejected only because the identification by such PWs was done for the first time in the Court.

311. Thus, having considered the submissions made by Mr. Rajan, the Court now proceeds to consider the individual cases of the acquitted accused on whose behalf

he appears.

A-1: Dharambir son of Tara Chand

312.1 He has been identified by PWs 36, 49, and 50 in the trial. He has also been named in the statement made by PW-50 to the police at the first instance so her identification of this accused is relied upon by this Court. PW-36 names him as one of the accused who were burning the houses of the Balmikis.

312.2 With PWs 49 and 50 both naming him in their respective statements to the police at the first instance under Section 161 Cr PC as well as identifying him in Court as one of the members of the group of assailants who attacked the house of Tara Chand, it stands established that he is guilty of having burnt the dwelling home of a Balmiki person in such a manner that it was completely destroyed and uninhabitable.

312.3 In view of the above discussion, A-1 hereby stands convicted for the offences punishable under Section 147 IPC, Sections 323/427/436 all read with Section 149 IPC, and Sections 3(2)(iv) and 3(1)(xv) POA Act read with Section 120B. Seeing as the offence punishable under Section 436 IPC is punishable with imprisonment for a term of 10 years or more, Section 3(2)(v) POA Act stands attracted.

A-29: Roshan Lal son of Ram Swaroop

313.1 He has been identified by PWs 42, 45, and 50. The dock identification of this accused by PW-50 is rejected as she did not name him in her statement under Section 161 Cr PC. PW-42 has identified him as one of the assailants who was carrying a *danda* and hitting Balmikies and causing damage to the properties of the

Balmikis. PW-45 has spoken of him being a member of the mob indulging in stone pelting.

313.2 In view of the above discussion, A-29 hereby stands convicted for the offences punishable under Section 147 IPC, Sections 323/427 both read with Section 149 IPC, and Section 3(1)(xv) POA Act read with Section 120B.

A-79: Satish son of Randhir

314.1 He has been identified by PWs 38, 40, 45, and 50 during the trial. At the outset, the dock identification by PW-50 is liable to be rejected for the reason that she did not name the accused in her statement under Section 161 Cr PC. PW-38 has spoken of him entering his house and indulging in looting and destruction of his property. PW-40 has named him as one of those indulging in stone pelting while PW-45 has also made a similar allegation of him being part of the mob which was indulging in stone pelting.

314.2 In view of the above discussion, A-79 hereby stands convicted for the offences punishable under Section 147 IPC, Sections 323/427 both read with Section 149 IPC, and Section 3(1)(xv) POA Act read with Section 120B.

A-52: Jogal @ Doger son of Hawa Singh

315.1 He was identified during the trial by PWs 29, 36, 38, 40, 42, 45, and 50. PW-50 failed to mention the name of this accused in her statement to the police at the first instance and therefore, her dock identification of him stands rejected. However, PW-29 has spoken of him being one of the assailants who entered the compound of his house by breaking the door and thereafter broke the water tank and set fire to his shops. PWs 36, 38, and 45 have all named him as one of those

indulging in stone pelting and causing damage to Balmiki properties. PW-42 too has accused him of hitting Balmikis with a *danda* and causing damage to their properties. Further, PW-40 has specifically named him as one of those setting the houses of the Balmiki community on fire. Therefore, his presence in the village at the time of rioting stands established by ample evidence and more specifically, his culpability in the incident of causing grievous injuries to PW-29 and the burning of his house and shops stands established.

315.2 In view of the above discussion, A-52 hereby stands convicted for the offences punishable under Section 147 IPC, Sections 325/427/452/436 all read with Section 149 IPC, and Sections 3(2)(iv) and 3(1)(xv) POA Act read with Section 120B. Seeing as the offence punishable under Section 436 IPC is punishable with imprisonment for a term of 10 years or more, Section 3(2)(v) POA Act stands attracted.

A-66: Pradeep son of Satbir

316.1 In the trial, he was identified as one of the assailants by PWs 30, 36, 42, 44, 45, 48, and 50. His dock identification by PW-50 is rejected due to her not mentioning his name at the first instance to the police. All these witnesses have spoken of him being one of the assailants who were indulging in stone pelting, causing damage to Balmiki properties, and attacking them with *dandas* and *gandasis*.

316.2 In view of the above discussion, A-66 hereby stands convicted for the offences punishable under Section 147 IPC, Sections 323/427 both read with Section 149 IPC, and Section 3(1)(xv) POA Act read with Section 120B.

Pradeep son of Jagbir (A-63), Suresh Kumar son of Balbir (A-18), and Dalbir son of Dalip Singh (A-5)

317. All three of these accused have been identified by PWs 49 and 50. However, the identification of these accused by PW-50 stands rejected as no mention is made of them in her statement to the police at the first instance. That leaves only the lone, uncorroborated testimony of PW-49 which is insufficient to bring home their guilt in light of the decision of the Supreme Court in ***Masalti v. State of U.P.*** (*supra*). Furthermore, in his defence, A-18 has examined Suresh (DW-27) who had produced a medical certificate to prove the feasible disability of A_18 to the extent of 70%. Thus, all three of them stand acquitted and the appeals by the complainants and the State stand dismissed insofar as they pertain to them.

Respondents represented by Mr. Anupam Sharma

318. The Court now proceeds to consider the submissions of learned counsel Mr. Anupam Sharma who appears on behalf of the acquitted accused A-95, A-33, A-32, A-59, A-47, A-69, A-50, and A-57. In brief his submissions may be summarised as follows:

(i) No specific role has been attributed by any of the witnesses to any of the accused persons.

(ii) Photographs of the burnt houses were not shown to the witnesses.

(iii) No incriminating recoveries have been made from any of the accused persons.

(iv) The forensic evidence shows that no hydrocarbons of petroleum were found present at the spot and therefore, the testimonies of the witnesses that oil was sprinkled on the houses of the Balmikis and then set on fire is not supported by the scientific evidence.

(v) Inconsistencies between the statements made by witnesses to the police and their depositions in the trial show that improvements have been made to falsely implicate the accused. In some cases, the accused have been identified for the first time only during the trial with no mention of their name being made in the earlier statements of the witnesses.

319. These contentions have already been addressed by this Court hereinbefore and it would suffice to say at this stage that these submissions made by Mr. Sharma merit rejection for the reasons already recorded in this judgment. Thus, having considered the submissions made on behalf of the accused, the Court now proceeds to consider their individual cases.

A-95: Jagdish @ Jangla son of Lahna Ram @ Lakshman

320.1 He has been identified during the trial by PWs 30, 42, and 50. However, his identification by PW-50 stands rejected as she has not named him in her initial statement to the police. PW-30 has identified him as one of those who was indulging in stone pelting and attacking Balmikis with a *jellie*. PW-42 has named him as a member of the rioting mob which caused damage to the properties of the Balmikis.

320.2 In view of the above discussion, A-95 hereby stands convicted for the offences punishable under Section 147 IPC, Sections 323/427 both read with Section 149 IPC, and Section 3(1)(xv) POA Act read with Section 120B.

A-33: Rajinder son of Dhup Singh

321.1 In the trial, he has been identified by PWs 33 and 50. Having been named by PW-50 in her initial statement under Section 161 Cr PC, her identification of this

accused is valid. She has made general allegations of him being a member of the rioting mob who was attacking Balmikis and causing damage to their properties. PW-33 has also alleged that he was indulging in stone pelting and brickbatting.

321.2 In view of the above discussion, A-33 hereby stands convicted for the offences punishable under Section 147 IPC, Sections 323/427 both read with Section 149 IPC, and Section 3(1)(xv) POA Act read with Section 120B.

Ajit son of Dalip (A-32), Manbir son of Jile Singh (A-59), Balwan Singh son of Jeela (A-47), Pawan son of Rajbir (A-69), Dalbir son of Tara Chand (A-50), Kuldeep son of Om Prakash (A-57)

322.1 As has already been discussed, the dock identification by PW-50 of witnesses who she has not previously named in her statement to the police at the first instance is liable to be rejected. Consequently, this Court finds that in the cases of A-32, A-47, A-69, A-50, and A-57, there is only witness each who seems to have identified them during the trial. In light of the discussion hereinbefore in the context of the decision in ***Masalti v. State of U.P.*** (*supra*), the testimony of a sole eye witness would not be sufficient to establish the guilt of an accused for membership of an unlawful assembly. Thus, the acquittals of all the aforementioned accused are upheld.

322.2 In the case of A-59, his identification by PW-50 is rejected on account of her not having named him at the first instance to the police. However, he has also been identified by PWs 42 and 48. Both of these witnesses are reliable and have made general allegations against the accused of being involved in the rioting which took place on 21st April 2010.

322.3 However, the defence examined Dr. Rajesh Malik (DW-10) who brought the register of the veterinary hospital (Ex.DW-10/A) to prove that A-59 was on duty as a veterinary livestock assistant on 21st April 2010 from 8 am to 2 pm. Likewise, Jagdish (DW-11) was also examined to prove that on that date, A-59 had gone with him to the hospital site for vaccination. The Court is satisfied that this accused has been able to prove his *alibi* and the cross examinations of the DWs examined by him have not yielded much for the prosecution and therefore, the acquittal of A-59 is upheld.

Respondents represented by Mr. M.L. Yadav

323. The Court now proceeds to consider the submissions made by learned counsel Mr. M.L. Yadav who appears on behalf of the acquitted accused A-87, A-28, A-98, A-80, A-40, A-2, A-14, and A-6. The central thrust of his arguments is that the witnesses sought to be relied upon by the prosecution to urge findings of guilt *qua* the aforementioned accused are unreliable and, in many cases, have identified the accused for the first time in the trial. He further argues that their testimonies lack independent corroboration and the non-conduct of a TIP would obviate the first time identification of the accused made by the PWs. These submissions have already been addressed by this Court earlier in this judgment and as such, they do not pass muster with this Court. That being the position, the Court now proceeds to consider the individual cases of the acquitted accused represented by Mr. Yadav.

A-87: Vikas son of Sunehra @ Sumer Singh

324.1 He has been identified in the trial by PWs 49 and 50 and CW-1, i.e. the

family members of deceased Tara Chand and Suman. The dock identification by PW-50 cannot be relied upon as this accused has not been named by her at the first instance in her statement to the police. PW-49 has identified him as one of those engaging in rioting, arson and causing damage to the properties of the Balmikis. CW-1 meanwhile also alleges that he had removed his clothes and was dancing in the *gali* and was part of the crowd indulging in stone pelting.

324.2 An attempt was made to establish his plea of *alibi* by examining Dalbir (DW-28), Sajjan (DW-36) and A-87 himself as DW-29. It was sought to be proved that A-87 was present at the farm of DW-28 in Jind for the purpose of purchasing chicks for his poultry business till 6 pm on 21st April 2010. However, as is rightly pointed out by learned SPP Ms. Richa Kapoor, his name is not mentioned in the *challan* which was produced by DW-28. The carbon copy of the *challan* does not bear the signature of A-87. This document is, therefore, not convincing at all. DW-36 was the driver of DW-28 and tried to show that he had made delivery of the chicks to V & V Poultry Farm. In his cross-examination, he admitted that he did not maintain any log book regarding the movement of his vehicle. This evidence, therefore, is of no assistance to A-87 whatsoever.

324.3 In view of the above discussion, A-87 hereby stands convicted for the offences punishable under Section 147 IPC, Sections 323/427/435 all read with Section 149 IPC, and Sections 3(2)(iii) and 3(1)(xv) POA Act read with Section 120B. It is further noted that the conviction under Section 3(2)(iii) POA Act shall supercede the conviction under Section 435 IPC.

A-80: Satyawan son of Rajender

325.1 He has been identified by PWs 36, 42, and 50. His identification by PW-50 stands rejected as she did not name him at the first instance to the police. PW-36 has accused him of indulging in stone pelting while PW-42 has accused him of sprinkling oil on the walls of PW-29's shop and setting it on fire.

325.2 The defence has examined Suresh (DW-41) who has deposed that A-80 is a mechanic who works at his workshop in Jind and had stayed there overnight due to work pressure and thus, was in Jind on the date of the incident. However, in his cross examination, he stated that he does not maintain an attendance record or a record of employment as his workshop only has 3-4 employees. The testimony of this witness does not appear to be truthful and does little to dislodge the testimonies of reliable PWs who have spoken to A-80's presence at the spot.

325.3 In view of the above discussion, A-80 hereby stands convicted for the offences punishable under Section 147 IPC, Sections 323/427/436 all read with Section 149 IPC, and Sections 3(2)(iv) and 3(1)(xv) POA Act read with Section 120B. Seeing as the offence punishable under Section 436 IPC is punishable with imprisonment for a term of 10 years or more, Section 3(2)(v) POA Act stands attracted.

A-2: Pawan son of Ram Mehar

326.1 PWs 42, 45, 49, and 50 had identified him in Court. PW-50 mentioned his name in her initial statement to the police under Section 161 Cr PC and has identified him as one of those who was involved in setting fire to the house of her

husband Tara Chand and has even spoken to him beating the deceased Tara Chand with a *danda* before pushing him into the burning house. PW-49 too identified him as one of the assailants who set fire to the houses of the Balmikis including his own father's. PW-45 accused A-2 of breaking into his house and causing damage to his properties. Further, PW-42 has also named him as one of the members of the rioting mob.

326.2 An attempt has been made by the defence to establish his plea of *alibi* by examining Virender (DW-6), a Balmiki resident of the village who has stated that the accused and him were in the fields of the accused since 4-4:15 am on 21st April 2010 and stayed there till evening. However, in the view of this Court, this appears to be the deposition of a witness whose livelihood depends on the Jat community which is dominant in Mirchpur. The evidence led by the prosecution remains unhindered by such testimony. Therefore, A-2's presence in the village at the time of rioting and his involvement in the gruesome murders of Tara Chand and Suman stands established.

326.3 In view of the above discussion, A-2 hereby stands convicted for the offences punishable under Section 147 IPC, Sections 323/427/452/436 all read with Section 149 IPC, Section 302 read with Section 120B IPC, and Sections 3(2)(iv) and 3(1)(xv) POA Act read with Section 120B IPC. Seeing as the offences punishable under Sections 302 and 436 IPC are punishable with imprisonment for a term of 10 years or more, Section 3(2)(v) POA Act stands attracted.

A-40: Amit son of Satyawan

327.1 He has been identified in the trial by PWs 45, 49, and 50. However, the

identification of this witness by PW-50 stands rejected as no mention is made of him in her statement to the police at the first instance. PW-45 names him as one of those indulging in arson and burning of Balmiki houses. PW-49 has named him as one of the assailants who burnt the houses of the Balmikis. His presence stands established as does his involvement in the rioting and arson of Balmiki properties.

327.2 In view of the above discussion, A-40 hereby stands convicted for the offences punishable under Section 147 IPC, Sections 323/427/435 all read with Section 149 IPC, and Sections 3(2)(iii) and 3(1)(xv) POA Act read with Section 120B. It is further noted that the conviction under Section 3(2)(iii) POA Act shall supercede the conviction under Section 435 IPC.

A-14: Deepak @ Sonu son of Krishan @ Pappu

328.1 He was identified during the trial by PWs 38, 42, 45, and 50. The identification by PW-50 is rejected as she did not name him at the first instance before the police. PW-38 has named this accused as one of those burning the houses of the Balmiki community. PW-42 speaks of seeing him with an oil container in his hand setting the houses on fire. PW-45 alleges that A-14 was part of the mob indulging in stone pelting and burning of houses.

328.2 In view of the above discussion, A-14 hereby stands convicted for the offences punishable under Section 147 IPC, Sections 323/427/435 all read with Section 149 IPC, and Sections 3(2)(iii) and 3(1)(xv) POA Act read with Section 120B. It is further noted that the conviction under Section 3(2)(iii) POA Act shall supercede the conviction under Section 435 IPC.

A-6: Balwan son of Inder Singh

329.1 He was identified in the trial by PWs 33, 42, 48, and 50. PW-50's failure to mention this accused at the first instance to the police means that her dock identification of this accused stands rejected. The other three witnesses have deposed to A-6 indulging in stone pelting, brickbatting and membership of the rioting mob.

329.2 In view of the above discussion, A-6 hereby stands convicted for the offences punishable under Section 147 IPC, Sections 323/427 both read with Section 149 IPC, and Section 3(1)(xv) POA Act read with Section 120B.

Pradeep son of Ramphal (A-28) and Vedpal son of Dayanand (A-98)

330. Both these accused have been identified by PWs 30 and 50 and in light of the rejection of PW-50's identification of them due to her not mentioning their names to the police at the first instance, there remains insufficient evidence for this Court to record a finding of guilt *qua* these accused in light of the decision in ***Masalti v. State of U.P.*** (*supra*). Their acquittals are accordingly upheld.

Respondents represented by Mr. R.P. Luthra

331. The Court now proceeds to deal with the submissions of learned counsel Mr. R.P. Luthra *qua* the acquitted accused for whom he appears, viz. A-21, A-4, A-93, and A-7. He submits that the trial Court's judgment of acquittal does not merit interference as it extended the benefit of doubt to the accused on account of material contradictions in witness depositions, improvements and fabrications by witnesses, dock identification of the accused and unexplained delay in recording

statements under Section 161 Cr PC. Furthermore, he seeks to assail the witnesses' testimonies by submitting that inconsistencies with the statements made by them to the police under Section 161 Cr PC were indicative of the untrustworthiness of such testimony. He also makes reference to Ved Pal Tanwar, at whose farmhouse the witnesses were residing in exile when deposing in Court. He submits that the possibility of witnesses being tutored or influenced for political ends cannot be ruled out. The eye witness testimonies not being trustworthy, the presence of the accused at the spot does not stand established. For the reasons already laid down hereinbefore, the Court finds no merit in any of these submissions and thus, proceeds to consider the individual cases of the accused:

A-21: Daya Singh son of Jeet Singh

332.1 He has been identified in the trial by PWs 36, 40, 42, 45, 48, and 50. The dock identification of this accused by PW-50 stands rejected due to the fact that this accused was not mentioned to the police by her at the first instance. PW-36 has deposed to his involvement in the burning of properties belonging to the Balmikis. PWs 40, 42, and 48 have spoken of his membership in the rioting mob and his indulging in stone pelting, arson and attacking the Balmikis. PW-45 has specifically alleged that A-21 was one of those who burnt his property.

332.2 In view of the above discussion, A-21 hereby stands convicted for the offences punishable under Section 147 IPC, Sections 323/427/435 all read with Section 149 IPC, and Sections 3(2)(iii) and 3(1)(xv) POA Act read with Section 120B. It is further noted that the conviction under Section 3(2)(iii) POA Act shall supercede the conviction under Section 435 IPC.

A-4: Rajbir @ Nanhe son of Mai Chand

333.1 He has been identified in the trial by PWs 25, 36, 37, 40, 44, and 50. PW-50 has identified this witness in her deposition in Court as well as in the statement made by her to the police under Section 161 Cr PC and has accused him of indulging in rioting and arson. PW-25 has named his as one of the accused who was damaging properties of the Balmiki community and dancing naked on the *gali*. A-36 has alleged his involvement in stone pelting and damaging household properties while PW-37 has spoken of his having a *danda* in his hand and attacking Balmikis. PW-44, the son of PW-48, states that A-4 was sprinkling oil on his house before it was burnt.

333.2 In view of the above discussion, A-4 hereby stands convicted for the offences punishable under Section 147 IPC, Sections 323/427/435 all read with Section 149 IPC, and Sections 3(2)(iii) and 3(1)(xv) POA Act read with Section 120B. It is further noted that the conviction under Section 3(2)(iii) POA Act shall supercede the conviction under Section 435 IPC.

Rupesh son of Tek Chand (A-93) and Satyawan son of Tara Chand (A-7)

334. In the case of A-93, he has been identified by PWs 36, 38, 42, and 44. However, this Court is of the view that he has successfully established his *alibi* by examining Manoj Kumar (DW-12) who had produced an attendance register to show that A-93 was working as a clerk at a school in Jind between 7:30 am and 3 pm. Therefore, the Court upholds the acquittal of this accused by the trial Court. In the case of A-7, he has been identified by PWs 45 and 50. However, with PW-50 not naming him in her initial statement to the police, the remaining testimony of PW-45 is not sufficient by itself to arrive at a finding of guilt. Thus, the acquittal

of this accused is hereby upheld.

Respondents represented by Mr. Jitender Sethi

335. Pawan son of Hoshiar Singh (A-68), Praveen son of Jagdev (A-67), and Sandeep @ Langra son of Amar Lal (A-75) have been represented by learned counsel Mr. Jitender Sethi and were identified only by PWs 42 and 50. However, with the identification of these accused by PW-50 being rejected as she failed to mention their name to the police at the first instance, the sole eye witness testimony of PW-42 would not be sufficient to bring home their guilt. The acquittals of these accused are therefore upheld.

Summary of findings

336. The observations and findings of this Court in the present case may be summarised as follows:

(i) There is a clear causal link that exists between the incidents that occurred on 19th, 20th and 21st April 2010 which was overlooked by the trial Court. The incident of 21st April 2010 has to be viewed in the context of the prevailing tension due to the perceived slight against the Jat community by persons from the Balmiki community which occurred on 19th April 2010 and then escalated.

(ii) The need to exaggerate the altercation between some Balmiki boys and Rajender, Karampal and Dinesh that occurred in the early hours of 21st April 2010, as an aggravated assault indicates the simmering tension that was prevalent in the village at the time, which was like a gunpowder keg kept waiting for a spark. This was again missed by the trial Court by seeing the incident on the morning of 21st April 2010 as a one off incident which had

nothing to do with the events of 19th and 20th April 2010.

(iii) Consequently, this Court is unable to subscribe to the sequence of events that has been laid down by the trial Court or its analysis of the same in trying to shift the blame onto the Balmiki boys for attacking members of the Jat community on the morning of 21st April 2010, which proved to be the spark that set off the violence that ensued on that date.

(iv) From the layout of the village, it is apparent that the Balmiki *basti* was located in one corner of the village abutting fields which lay to the south and surrounded by the dwellings of the Jat community on all other sides. There was no difficulty at all for the Jats to identify the Balmiki houses and attack them. In that sense, it could be said that the houses were attacked selectively. The conclusion drawn by the trial Court with regard to the selective targeting of the houses of the Balmikis is, therefore, set aside by this Court.

(v) The damage and destruction that is evidenced from the record is widespread and, in the opinion of this Court, could not have been carried by a small group of Jat youth as is speculated by the trial Court. There is no doubt that it was indeed a mob which made a coordinated and premeditated attack on the Balmiki *basti*.

(vi) The conclusion of the trial Court that there was no criminal conspiracy is unsustainable in law. The trial Court failed to examine the photographs, videograph, and site plans in its analysis of the events of 21st April 2010 and erred in accepting the alternative version of the incident on 21st April 2010 as put forth by the defence. This part of the finding of the trial Court is, therefore, set aside by this Court.

(vii) It is clear in the present case that an unlawful assembly comprising members

of the Jat community was formed with the common object of setting fire to the properties of the Balmiki community and perpetrating violence against them, as it stands established that the members of said unlawful assembly came armed with stones and oil cans as well as *lathis*, *jellies* and *gandasis*which, in the present context, may be considered deadly weapons. The common object of the unlawful assembly was to 'teach the Balmiki community a lesson'. Section 149 IPC is, therefore, clearly attracted.

(viii) Section 3 of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 introduced an altogether new Schedule to replace the earlier one wherein the Scheduled Castes in the State of Haryana were also listed in Part V. The Balmiki caste is listed under Entry No.2 of Part V as a Scheduled Caste. Therefore, the offences committed against the Balmiki community attract the POA Act.

(ix) As regards the offences committed with the intention to humiliate the Balmikis that have been adverted to by the prosecution, this Court finds that the evidence adduced in this regard is not sufficient to find any of the accused guilty of the offence under Section 3(1)(x) of the POA Act.

(x) There is abundant evidence to show that at least 254 Balmiki families left Mirchpur and sought shelter in Ved Pal Tanwar's farmhouse due to the attack suffered at the hands of the Jat mob. It is the collective act of violence by the Jats that compelled these 254 families of the Balmiki community to leave the village. Many of them are still awaiting rehabilitation and reparation. They have been too scared to return. The offence under Section 3 (1) (xv) of the POA Act stands established beyond reasonable doubt and is made out *qua* some of the accused to whom notices have been issued in the present case.

(xi) As regards the accused who have been held to be involved in the burning of the houses of the deceased Tara Chand, his wife Kamala or Dhoop Singh, the offence under Section 3(2)(iv) POA Act stands attracted, whereas for those accused who have been held to be involved in the damage by fire caused to the other houses, the offence under Section 3(2)(iii) POA Act stands attracted.

(xii) The finding of the trial Court that this was not an instance of violence driven by caste hatred is unsustainable and is hereby set aside. The prosecution has been able to establish beyond reasonable doubt that the offences under Section 3(1)(xv) and Section 3(2)(iii), (iv) and (v) POA Act stand attracted *qua* some of the accused persons.

(xiii) Section 8 (b) POA Act is of particular relevance in the present case since it makes specific reference to a group of persons committing an offence as a sequel to an existing dispute regarding land "or any other matter". In such a scenario, it is stipulated that the presumption is drawn as regards the common intention and prosecution of the common object. In the context of the incident of 19th April 2010 and the incident that subsequently occurred on 21st April 2010, the presumption under Section 8 (b) stands attracted.

(xiv) This Court's findings with respect to the POA Act and the incident of 21st April 2010 are as follows:

a) There was a deliberate targeting of the houses of the Balmikis by the Jats;

b) This was an instance of caste based violence meant to teach the Balmikis a lesson for the perceived insult caused to the Jats on 19th and 21st April 2010;

c) The Jats had planned their attack in advance and had come to the Balmiki *basti* well armed with oil cans, *rehris*filled with stones, lathis, *gandasis*, *jellies* etc.;

d) The properties of the Balmikis were burnt and their belongings were damaged/destroyed as is evidenced by the photographs and videograph on record.

(xv) The inconsistencies and omissions highlighted by the trial Court in rejecting the testimonies of multiple PWs do not materially affect the case of the prosecution. The said witnesses, as discussed, remained unshaken and were, therefore, reliable.

(xvi) The mere fact that a TIP was not conducted in the present case would not vitiate the testimonies of the witnesses who have identified the assailants in the Court. Furthermore, merely because a witness belongs to the Balmiki community or may be closely related to a victim does not mean that such evidence should be disregarded *per se*.

(xvii) The disregard by the trial Court of the evidence of PWs 42 to 50 only on the ground that none of them came forward to save the two deceased or accompany them to the hospital even though they were related to them is an unacceptable finding. It fails to acknowledge that the situation that existed in Mirchpur on 21st April 2010 was such that the Balmikis were in a vulnerable position, were disoriented and paralyzed by fear. There can be no speculation about how a person should react in a particular contingency.

(xviii) The trial Court erred in rejecting the testimonies of the PWs because they contradicted their statements made before the Commission of Inquiry (CoI). Statements made before a CoI are, in terms of Section 6 of the Commission of Inquiry Act, inadmissible in a trial.

(xix) The trial Court erred in rejecting the testimony of the PWs with regard to the burning of houses in the Balmiki *basti* by the accused persons merely due to the absence of hydrocarbons of petroleum in the forensic samples and lack of corroboration by medical evidence. As the trial Court itself has noted, the manner in which the samples were collected was less than satisfactory, no specialist team was called and the extremely intricate job of collection of samples was left to a team of non-experts.

(xx) A conviction may be sustained if an accused person has been named and identified by atleast two reliable witnesses who give a cogent and consistent account of the incident.

(xxi) PW-50 is a reliable witness. As a rule of prudence as regards consistency, the testimony of PW-50 is relied upon to the extent of the 16 accused she named in the first instance, and then again, this testimony *qua* these 16 has only been relied upon if corroborated by at least one other reliable eye witness.

(xxii) It cannot be said in the present case that the dying declaration of the deceased Tara Chand is uncorroborated, as there is sufficient evidence in the form of the depositions of CW-1 and PWs 49 and 50 as well as those of PWs 55, 64 and 68 that fully corroborate the dying declaration, which is a substantive piece of evidence which has been relied upon to convict the accused persons.

(xxiii) The incidents of 21st April 2010 constituted an act of deliberate targeting of the Balmiki houses by the Jats and setting them on fire in a pre-planned and carefully orchestrated manner. It was pursuant to a conspiracy by the Jats to 'teach the Balmikis a lesson'. Tara Chand and his daughter Suman were set on fire and pushed inside the house in that condition in the full knowledge

that they were Balmikis. The dying declaration of Tara Chand more than adequately establishes the role of not only A-34 but also that of his associates who were identified by those present i.e. PW-49, PW-50 and CW-1. Consequently, the Court holds that the killing of Tara Chand and Suman was murder punishable under Section 302 IPC. The judgment of the trial court that it was culpable homicide punishable under Section 304 (II) IPC is hereby set aside.

Sentences awarded

337. Having convicted some of the accused persons in the manner mentioned hereinbefore, the Court now endeavours to set out the sentences to be served by each of the convicted accused for each of the offences for which they have been convicted. Before doing so, it would be pertinent to note the observations of the Supreme Court in ***Shankar Kerba Jadhav v. State of Maharashtra AIR 1971 SC 840***, as under:

> "12. Where however the appeal is from an order of acquittal the matter is at large. There is no sentence which is binding on a person who was once an accused. He comes before the court with the presumption of innocence. If the court finds that the acquittal was not justified and that he was guilty of the offence with which he was charged, it is for the appeal court to order punishment to fit the crime. If the appeal is from an order of acquittal with no prior order of sentence, the punishment must be commensurate with the gravity of the offence. But if the order of acquittal is preceded by an order of conviction the court hearing the appeal from acquittal should not impose a sentence greater than what the court of first instance could have imposed inasmuch as if the trial court had given him the maximum sentence which it was competent to give and no appeal was preferred by the accused, the State could not have approached the High Court under any provision of the Code for enhancement of the sentence. The interposition of the order of an intermediate court of

appeal and acquittal of the accused by it should not put the accused in a predicament worse than that before the trial court."

338. That being the position of law, the Court proceeds to sentence the convicted accused as under:

(i) For the offences punishable under Section 302 IPC and Sections 3(2)(iv) and (v) POA Act: the convict is sentenced to imprisonment for life along with payment of Rs.10,000/- fine and in default of payment of fine, to further SI for three months.

(ii) For the offence punishable under Section 3(2)(iii) POA Act: the convict is sentenced to RI for two years along with payment of Rs.10,000/- fine and in default of payment of fine, to further SI for three months.

(iii) For the offence punishable under Section 3(1)(xv) POA Act: the convict is sentenced to RI for one year along with payment of Rs.10,000/- fine and in default of payment of fine, to further SI for three months.

(iv) For the offence punishable under Section 323 IPC: the convict is sentenced to SI for one year along with payment of Rs.1,000/- fine and in default of payment of fine, to further SI for three months.

(v) For the offence punishable under Section 325 IPC: the convict is sentenced to RI for three years along with payment of Rs.10,000/- fine and in default of payment of fine, to further SI for three months.

(vi) For the offence punishable under Section 435 IPC: the convict is sentenced to RI for two years along with payment of Rs.10,000/- fine and in default of payment of fine, to further SI for three months.

(vii) For the offence punishable under Section 436 IPC: the convict is sentenced to RI for three years along with payment of Rs.10,000/- fine and in default of payment of fine, to further SI for three months.

(viii) For the offence punishable under Section 427 IPC: the convict is sentenced to RI for six months and payment of Rs.5,000/- fine and in default of payment of fine, to further SI for two months.

(ix) For the offence punishable under Section 147 IPC: the convict is sentenced to SI for one year along with payment of Rs.10,000/- fine and in default of payment of fine, to further SI for three months.

(x) For the offence punishable under Section 452 IPC: the convict is sentenced to RI for two years along with payment of Rs.10,000/- fine and in default of payment of fine, to further SI for three months.

(xi) All sentences are directed to run concurrently.

(xii) The fine amounts collected shall be utilised by the Government of Haryana as part of the provision of pecuniary relief and rehabilitation to the victims.

Conclusion

339. Therefore, in light of the findings and conclusions of this Court noted hereinabove, it is seen that 20 accused persons previously acquitted by the trial Court now stand convicted for various offences under the IPC and the POA Act by this judgment while 21 acquittals have been upheld due to there being insufficient evidence to establish the guilt of the accused. The convictions of the 13 convicted accused in the present appeals have been upheld and, in certain aspects, enhanced. The following table depicts the position as regards each of the accused persons:

Respondent	A. No.	R.No. in CRL. A.139/ 2012	R.No. in CRL. A.1299/ 2012	By the trial Court	By the High Court
Kulwinder Son of Ram Mehar	38	2	1	Convicted under Section 147 IPC, Sections 323/427/436/ 304(II) read with Section 149 IPC, and Section 3(2)(iv)	Convicted under Section 147 IPC, Sections 323/427/452/436 read with Section 149 IPC, Section 302 IPC read with Section 120B

				POA Act	IPC, and Sections 3(2)(iv) and 3(1)(xv) POA Act read with Section 120B IPC
Ramphal Son of Prithvi	20	3	2	Convicted under Section 147 IPC, Sections 323/427/436/ 304(II) read with Section 149 IPC, and Section 3(2)(iv) POA Act	Convicted under Section 147 IPC, Sections 325/427/452/436 read with Section 149 IPC, Section 302 IPC read with Section 120B IPC, and Sections 3(2)(iv) and 3(1)(xv) POA Act read with Section 120B IPC
Rajender Son of Pale	34	4	3	Convicted under Section 147 IPC, Sections 323/427/436/ 304(II) read with Section 149 IPC, and Section 3(2)(iv) POA Act	Convicted under Section 147 IPC, Sections 323/427/452/436 read with Section 149 IPC, Section 302 IPC read with Section 120B IPC, and Sections 3(2)(iv) and 3(1)(xv) POA Act read with Section 120B IPC
Baljeet Son of Inder	42	5	4	Convicted under Section 147 IPC, Sections 323/427/435 read with Section 149 IPC, and Section 3(2)(iii) POA Act	Deceased
Karambir Son of Tara Chand	3	6	5	Convicted under Section 147 IPC, Sections 323/427/435 read with Section 149 IPC, and Section 3(2)(iii) POA Act	Affirmed along with conviction under Section 436 IPC instead of under Section 435 IPC; under Section 3(2)(iv) POA Act read with Section 120B IPC instead of under Section 3(2)(iii) POA Act and further convicted under Section 3(1)(xv) POA Act read with Section 120B IPC
Karampal Son of Satbir	25	7	6	Convicted under Section 147 IPC, Sections 323/427/435 read with Section 149 IPC, and Section 3(2)(iii) POA Act	Affirmed along with conviction under Section 3(2)(iii) POA Act read with Section 120B IPC instead of under Section 3(2)(iii) POA Act and further convicted under Section 3(1)(xv) POA Act read with Section 120B IPC
Dharambir @ Illa Son of Maichand	13	8	7	Convicted under Section 147 IPC, Sections 323/427/435 read with Section 149 IPC, and Section 3(2)(iii) POA Act	Affirmed along with conviction under Section 3(2)(iii) POA Act read with Section 120B IPC instead of under Section 3(2)(iii) POA Act and further convicted under Section 3(1)(xv) POA Act read with Section 120B IPC
Bobal @ Langra Son of Tek Chand	94	9	8	Convicted under Section 147 IPC, Sections 323/427/435 read with Section 149 IPC, and Section 3(2)(iii) POA Act	Deceased
Sumit Son of Satyawan	27	10	9	Convicted under Section 147 IPC and Sections 323/427 read with Section 149 IPC	Affirmed and further convicted under Section 435 read with Section 149 IPC and Sections

					3(2)(iii) and 3(1)(xv) POA Act read with Section 120B IPC
Pradeep Son of Jaibir	64	11	10	Convicted under Section 147 IPC and Sections 323/427 read with Section 149 IPC	Affirmed and further convicted under Section 436 read with Section 149 IPC and Sections 3(2)(iv) and 3(1)(xv) POA Act read with Section 120B IPC
Rajpal Son of Sheo Chand	90	12	11	Convicted under Section 147 IPC and Sections 323/427 read with Section 149 IPC	Affirmed and further convicted under Section 436 read with Section 149 IPC and Sections 3(2)(iv) and 3(1)(xv) POA Act read with Section 120B IPC
Pradeep Son of Suresh	65	13	12	Convicted under Section 147 IPC and Sections 323/427 read with Section 149 IPC	Affirmed and further convicted under Section 436 read with Section 149 IPC and Sections 3(2)(iv) and 3(1)(xv) POA Act read with Section 120B IPC
Sunil Son of Dayanand	41	14	13	Convicted under Section 147 IPC and Sections 323/427 read with Section 149 IPC	Affirmed and further convicted under Section 435 read with Section 149 IPC and Sections 3(2)(iii) and 3(1)(xv) POA Act read with Section 120B IPC
Rishi Son of Satbir	23	15	14	Convicted under Section 147 IPC and Sections 323/427 read with Section 149 IPC	Deceased
Monu Son of Suresh	39	16	15	Convicted under Section 147 IPC and Sections 323/427 read with Section 149 IPC	Affirmed and further convicted under Section 435 read with Section 149 IPC and Sections 3(2)(iii) and 3(1)(xv) POA Act read with Section 120B IPC
Jagdish @ Hathi Son of Baru Ram	17	17	16	Acquitted	Deceased
Pawan Son of Hoshiar Singh	68	18	17	Acquitted	Acquitted
Praveen Son of Jagdev	67	19	18	Acquitted	Acquitted
Sandeep @ Langra Son of Chander	75	20	19	Acquitted	Acquitted
Sanjay @ Sandeep Son of Amar Lal	76	21	20	Acquitted	Acquitted
Jitender Son of Satbir	53	22	21	Acquitted	Acquitted
Jokhar @ Joginder Son of Inder Singh	89	23	22	Acquitted	Reversed and hereby convicted under Section 147 IPC, Sections 323/427 read with Section 149 IPC, and Section

					3(1)(xv) read with Section 120B IPC
Kuldeep @ Midda Son of Balbir	15	24	23	Acquitted	Acquitted
Sonu @ Monu Son of Ramesh	83		24	Acquitted	Reversed and hereby convicted under Section 147 IPC, Sections 323/427 read with Section 149 IPC, and Section 3(1)(xv) read with Section 120B IPC
Naseeb Son of Prem Singh	60	26	26	Acquitted	Acquitted
Rajesh Son of Dupa	43	27	27	Acquitted	Acquitted
Ajit Son of Dalip	32	28	28	Acquitted	Acquitted
Jagdish @ Jangla Son of Lahna Ram	95	29	29	Acquitted	Reversed and hereby convicted under Section 147 IPC, Sections 323/427 read with Section 149 IPC, and Section 3(1)(xv) read with Section 120B IPC
Manbir Son of Jile Singh	59	30	30	Acquitted	Acquitted
Balwan Singh Son of Jeela	47	31	31	Acquitted	Acquitted
Rajinder Son of Dhup Singh	33	34	34	Acquitted	Reversed and hereby convicted under Section 147 IPC, Sections 323/427 read with Section 149 IPC, and Section 3(1)(xv) read with Section 120B IPC
Pawan Son of Rajbir	69	35	35	Acquitted	Acquitted
Dalbir Son of Tara Chand	50	36	36	Acquitted	Acquitted
Kuldeep Son of Om Prakash	57	37	37	Acquitted	Acquitted
Dharambir Son of Tara Chand	1	39	39	Acquitted	Reversed and hereby convicted under Section 147 IPC, Sections 323/427/436 read with Section 149 IPC, and Sections 3(2)(iv) and 3(1)(xv) POA Act read with Section 120B IPC
Roshan Lal Son of Ram Swaroop	29	40	40	Acquitted	Reversed and hereby convicted under Section 147 IPC, Sections 323/427 read with Section 149 IPC, and Section

					3(1)(xv) read with Section 120B IPC
Sattu Singh Son of Randhir	79	45	45	Acquitted	Reversed and hereby convicted under Section 147 IPC, Sections 323/427 read with Section 149 IPC, and Section 3(1)(xv) read with Section 120B IPC
Jogal @ Doger Son of Hawa Singh	52	46	46	Acquitted	Reversed and hereby convicted under Section 147 IPC, Sections 325/427/452/436 read with Section 149 IPC, and Sections 3(2)(iv) and 3(1)(xv) POA Act read with Section 120B IPC
Pradeep Son of Satbir	66	47	47	Acquitted	Reversed and hereby convicted under Section 147 IPC, Sections 323/427 read with Section 149 IPC, and Section 3(1)(xv) read with Section 120B IPC
Pradeep Son of Jagbir	63	48	48	Acquitted	Acquitted
Dalbir Son of Dalip Singh	5	49	49	Acquitted	Acquitted
Suresh Kumar Son of Balbir	18	51	51	Acquitted	Acquitted
Vikash Son of Sunehra	87	52	52	Acquitted	Reversed and hereby convicted under Section 147 IPC, Sections 323/427/435 read with Section 149 IPC, and Sections 3(2)(iii) and 3(1)(xv) POA Act read with Section 120B IPC
Pradeep Son of Ramphal	28	56	56	Acquitted	Acquitted
Vedpal Son of Dayanand	98	57	57	Acquitted	Acquitted
Satyawan Son of Rajender	80	58	58	Acquitted	Reversed and hereby convicted under Section 147 IPC, Sections 323/427/436 read with Section 149 IPC, and Sections 3(2)(iv) and 3(1)(xv) POA Act read with Section 120B IPC
Amit Son of Satyawan	40	59	59	Acquitted	Reversed and hereby convicted under Section 147 IPC, Sections 323/427/435 read with Section 149 IPC, and Sections 3(2)(iii) and 3(1)(xv) POA Act read with Section 120B IPC
Pawan	2	60	60	Acquitted	Reversed and hereby convicted

Son of Ram Mehar					under Section 147 IPC, Sections 323/427/452/436 read with Section 149 IPC, Section 302 IPC read with Section 120B IPC, and Sections 3(2)(iv) and 3(1)(xv) POA Act read with Section 120B IPC
Deepak @ Sonu Son of Krishan @ Pappu	14	61	61	Acquitted	Reversed and hereby convicted under Section 147 IPC, Sections 323/427/435 read with Section 149 IPC, and Sections 3(2)(iii) and 3(1)(xv) POA Act read with Section 120B IPC
Balwan Son of Inder Singh	6	62	62	Acquitted	Reversed and hereby convicted under Section 147 IPC, Sections 323/427 read with Section 149 IPC, and Section 3(1)(xv) read with Section 120B IPC
Pradeep Singh Son of Balwan	22	63	63	Acquitted	Reversed and hereby convicted under Section 147 IPC, Sections 323/427/435 read with Section 149 IPC, and Sections 3(2)(iii) and 3(1)(xv) POA Act read with Section 120B IPC
Sanjay Son of Dayanand	77	64	64	Acquitted	Reversed and hereby convicted under Section 147 IPC, Sections 325/427/452/436 read with Section 149 IPC, and Sections 3(2)(iv) and 3(1)(xv) POA Act read with Section 120B IPC
Satyawan @ Satta Singh Son of Karan Singh	78	65	65	Acquitted	Reversed and hereby convicted under Section 147 IPC, Sections 323/427/435 read with Section 149 IPC, and Sections 3(2)(iii) and 3(1)(xv) POA Act read with Section 120B IPC
Daya Singh Son of Jeet Singh	21	66	66	Acquitted	Reversed and hereby convicted under Section 147 IPC, Sections 323/427/435 read with Section 149 IPC, and Sections 3(2)(iii) and 3(1)(xv) POA Act read with Section 120B IPC
Rupesh Son of Tek Chand	93	67	67	Acquitted	Acquitted
Rajbir @ Nanhe Son of Mai Chand	4	68	68	Acquitted	Reversed and hereby convicted under Section 147 IPC, Sections 323/427/435 read with Section 149 IPC, and Sections 3(2)(iii) and 3(1)(xv) POA Act read with Section 120B IPC

Satyawan Son of Tara Chand	7	90	90	Acquitted	Acquitted
Jasbir @ Lillu Son of Raja	58	Respondent in CRL.A.1472/2013		Acquitted of all charges except under Section 174A IPC	Acquittals reversed and hereby convicted under Section 147 IPC, Sections 323/427 read with Section 149 IPC, and Section 3(1)(xv) read with Section 120B IPC

340. A-20 and A-34, having been sentenced to life imprisonment by the trial Court, are presently in custody and shall continue as such in light of their modified conviction and sentence. A-38, who was also sentenced to life imprisonment by the trial Court, was granted suspension of his sentence by this Court's order dated 18th August 2017. He shall surrender forthwith. The bail and surety bonds furnished by A-38 stand cancelled.

341. As for the remaining accused persons convicted by this judgment, they are directed to surrender on or before 1st September 2018 failing which the SHO of PS Narnaund, Haryana will take all necessary steps to take them into custody.

342. Crl.A.129/2012, Crl.A.190/2012, Crl.A.210/2012, and Crl.A.226/2012 are hereby dismissed and Crl.A.139/2012, Crl.A.1299/2012, and Crl.A.1472/2013 are disposed of in the above terms. Pending applications, if any, are also disposed of. The trial Court record be returned forthwith along with a certified copy of this judgment.

343. This Court would like to record its appreciation of all the learned counsel who appeared, viz. learned SPP Ms. Richa Kapoor for the State of Haryana, learned counsel Ms. Anubha Rastogi and Mr. Shreeji Bhavsar for the complainants,

learned Senior Counsel Mr. N. Hariharan and Mr. Jayant Sud and learned counsel Mr. M.N. Dudeja, Ms. Sumita Kapil, Mr. Mukesh Kalia, Mr. Jitender Sethi, Mr. R.P. Luthra, Mr. Anupam Sharma, Mr. M.L. Yadav, Mr. Ajay Verma, and Mr. Sudarshan Rajan, for their excellent presentation of the case in a thoroughly competent manner and in the true spirit of the legal profession.

Epilogue

344. 254 families of the Balmiki community had to flee Mirchpur as a result of the violence which they were subjected to at the hands of the Jat community on 21st April 2010. Many of them sought shelter in the farm house of Ved Pal Tanwar. Those families have continued to remain there as is stated by the learned SPP from whom enquiry was made in that regard. The Court also takes note of the fact that Writ Petition (Civil) No.211 of 2010 (***Jaswant v. State of Haryana***) was initially filed in the Supreme Court of India seeking relief and rehabilitation for the displaced Dalit/Balmiki victims as a result of the violent incident that took place in Mirchpur.

345. There is an order dated 10th April 2015 passed by the Supreme Court in the said case taking on record the enquiry report dated 24th September 2014 of Justice Iqbal Singh (Retd.). It appears that this writ petition was subsequently transferred to the Punjab and Haryana High Court and registered there as CWP No.20016 of 2015. The Court finds that the case has been adjourned from time to time. The last order in the case was passed on 24th July 2018, adjourning the case to 21st November 2018.

346. There is a further order dated 9th October 2017 passed by the Punjab and Haryana High Court noting that according to the district authorities,

"approximately 40-45 families continued to reside in village Mirchpur and thereafter 33 families which had migrated from Mirchpur returned". It was observed that with the above families now residing in Mirchpur, there was no justification as to why the families living at the farm house of Ved Pal Tanwar cannot reside along with the co-villagers "especially when all measures for providing adequate security have been taken by the State Government".

347. Be that as it may, as has been reported in news published by the Press Trust of India on 6th April 2018, there is a proposal by the Government of Haryana to rehabilitate "254 Dalit families which had migrated after two people were burnt alive in the inter-caste violence at Mirchpur village of Hissar District eight years ago". This announcement was made by Mr. Krishan Kumar Bedi, a Cabinet Minister in the Haryana Government. According to Mr. Bedi, the Chief Minister had, on 1st January 2017 itself, decided to rehabilitate the victim families. The official announcement by Mr. Bedi is reported to have said that the decision had been arrived at "on the initiatives of the Chief Minister".

348. The proposal was to settle the displaced families on an 8 acre plot of land at Dhandoor village in Hissar District from 1st June 2018. Then there is another news report of the Tribune dated 8th July 2018 again stating that the Dalits of Mirchpur village would be rehabilitated "in the newly carved town Deen Dayal Puram in Dhandoor village adjoining Hissar town". The Chief Minister reportedly laid the foundation stone for the said township which was to come up on 8 acres along the Sirsa Road "to rehabilitate 258 Dalit Families of Mirchpur Village". The State Government proposed spending Rs.4.56 crores to lay down the infrastructure and civic facilities in the proposed township. The news item notes that "many of these

families are presently residing in makeshift accommodation in a farmhouse on the outskirts of Hissar, while others have returned to their native Mirchpur village".

349. The unstated footnote to the above facts is that those who had decided to stay back at Mirchpur village did not support the prosecution in the present criminal trial while those who decided not to return are the ones who did. This in itself is a telling commentary on the fear and intimidation that the Dalits must still experience in Mirchpur as a result of the incidents of 19th, 20th and 21st April 2010. Also, it is a sobering fact that the Government of Haryana has sought to rehabilitate the displaced families not in Mirchpur but in a separate township. The question is whether this accords with the constitutional promise of equality, social justice and fraternity assuring the dignity of the individual.

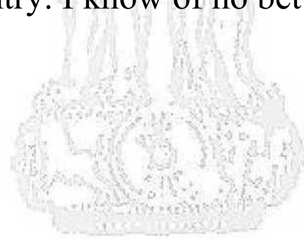
350. 71 years after Independence, instances of atrocities against Scheduled Castes by those belonging to dominant castes have shown no sign of abating. The incidents that took place in Mirchpur between 19th and 21st April 2010 serve as yet another grim reminder of "the complete absence of two things in Indian society" as noted by Dr. B.R. Ambedkar when he tabled the final draft of the Constitution of India before the Constituent Assembly on 25th November 1949. One was 'equality' and the other, 'fraternity'.

351. Dr. Ambedkar highlighted the "life of contradictions" the nation would be entering into on 26th January 1950 when he said, "In politics, we will be recognising the principles of 'one man-one vote' and 'one vote-one value'. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of 'one man-one value'." He asked then, as millions of *dalits* including the Balmikis of Mirchpur ask even now: "How long shall we

continue to live this life of contradictions?”

352. Dr. Ambedkar did not stop there but showed the way forward when he said:

> “Independence is no doubt a matter of joy. But let us not forget that this independence has thrown on us great responsibilities. By independence, we have lost the excuse of blaming the British for anything going wrong. If hereafter things go wrong, we will have nobody to blame except ourselves. There is great danger of things going wrong. Times are fact changing. People including our own are being moved by new ideologies. They are getting tired of Government by the people. They are prepared to have Governments for the people and are indifferent whether it is Government of the people and by the people. If we wish to preserve the Constitution in which we have sought to enshrine the principle of Government of the people, for the people, and by the people, let us resolve not to be tardy in the recognition of the evils that lie across our path and which induce people to prefer Government for the people to Government by the people, nor to be weak in our initiative to remove them. That is the only way to serve the country. I know of no better.”



S. MURALIDHAR, J.

I.S. MEHTA, J.

August 24 2018
rd/anb/mw